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IMPLEMENTATION OF THE SURFACE MINING RECLAMATION CONTROL ACT OF 1977 IN THE APPALACHIAN COAL REGION

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON THE

IMPLEMENTATION OF THE SURFACE MINING RECLAMATION
CONTROL ACT OF 1977 IN THE APPALACHIAN COAL REGION

RICHLANDS, VA,
APRIL 18, 1984

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IMPLEMENTATION OF THE SURFACE MINING RECLAMATION CONTROL ACT OF 1977 IN THE APPALACHIAN COAL REGION

WEDNESDAY, APRIL 18, 1984

U.S. Senate,
Subcommittee on Energy and Mineral Resources,
Committee on Energy and Natural Resources,
Richlands, VA.

The subcommittee met, pursuant to notice, at 9:05 a.m., at the Southwest Virginia Community College, Richlands, VA, Hon. John W. Warner, presiding.

Present: Senator Warner.

Also present: Roger Sindelar, counsel; and Linda Mason, professional staff member for the minority.

Senator **Warner**. Ladies and gentlemen, we will have the hearing come to order.

I am going to ask Mr. Sindelar to time me. I am going to take no more than 7 minutes, which is the amount of time that each witness is fully entitled to. We will try to arrange for added time, provided we can get it all done between the time of 9 and 12 noon or thereabouts.

First, we are again grateful to the hosting of this hearing by this distinguished educational institution. Dean Calver, would you be kind enough to say a few words on behalf of the president, who I understand is otherwise engaged.

STATEMENT OF RICHARD CALVER, DEAN, SOUTHWEST VIRGINIA COMMUNITY COLLEGE

Dean **Calver**. Thank you, Senator Warner. The Southwest Virginia Community College is pleased to have you folks on the campus today.

And our distinguished senior Senator Warner, we are glad you are here today. We are pleased that you have been with us a couple of days and also to be able to sponsor the U.S. Senate Subcommittee on Energy and Mineral Resources. We welcome each and every one of you here today.

Dr. King, who is in Richmond at a president's meeting, extends his apologies for not being here today.

Anything you folks need while you are here on campus, let us know. This is your college.

Senator **Warner**. Thank you very much.

First, I would like to have each counsel introduce themselves.

Mr. **Sindelar**. Roger Sindelar, counsel of the Subcommittee on Energy and Mineral Resources.

Ms. **Mason**. I am Linda Mason, professional staff member, minority staff on the committee.

OPENING STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Today the Senate Subcommittee on Energy and Mineral Resources holds an oversight hearing on the "Implementation of the Surface Mining Control and Reclamation Act of 1977 in the Appalachian Coal Region."

I know you share my deep concern about the devastating levels of unemployment here in the Appalachian coal fields. Before turning to the subject of this hearing, I want to mention three additional issues which will be coming up later this spring, which will impact our efforts to promote the increased use of American coal both at home and abroad.

Shortly after Congress convenes April 24, I will introduce the "Coal Export Enhancement Act of 1984" which would set up a Federal Coal Export Commission. The Commission would consist of both Federal and private officials whose goal would be to increase the United States' share of the world coal market. The Commission's mandate will be to explore new methods, including financing, promotion, and marketing, to increase American coal consumption worldwide.

Secondly, I will be working with the coal caucus, that is an informal group of Senators, during the spring to push the administration to play "hard ball"—and I mean just that—"hard ball" on coal exports. The United States has suffered a disproportionate reduction in export coal sales in the world coal market during the recent recession. This is especially true in the case of Japan, which country has been investing heavily in the coal reserves of Australia and Canada, but not the United States.

Meanwhile, Japan enjoys a $20 billion trade surplus which continues to rise. Purchases of American coal should be used to reduce this deficit, but the Japanese have not done so. It is time for the United States to take off their gloves and get tough on this issue.

On May 15 I join the House and Senate coal caucus colleagues in meeting with an official Japanese coal mission. At the meeting I will voice my vehement displeasure with the Japanese over their lack of commitment to purchase U.S. coal.

Third, the Director of the Office of Surface Mining, Richard Harris, has recently resigned. He was a capable leader in this area, and I think he will be missed certainly by those of us in the Senate who have worked with him.

The Director of the Office of Surface Mining plays a very critical role in implementing the Surface Mining Act. Secretary of the Interior William Clark has recommended to the President that John Ward be nominated. Ward, director of the Colorado Division of Mines, has a work history deeply rooted in western surface mining.

Should Mr. Ward's name be forwarded to the Senate for a confirmation—I have every expectation that will be shortly—I will thoroughly question him about his understanding of the uniqueness of the eastern surface mining. My vote for Mr. Ward's confirmation will be dependent upon his convincing me that he understands eastern coal and will treat it equitably with western coal. The concerns expressed here today will be brought to the nominee's attention during the confirmation hearings.

Let's turn to the subject of today's hearing.

The act of 1977 was enacted to set Federal standards for surface mining operations, correct problems from past practices, and protect society and the environment from the adverse effects of surface coal mining. To say that implementation of the Surface Mining Act was controversial, as we all know, is an understatement.

It is very appropriate that the subcommittee returns to the southwest Virginia coal region to discuss surface mining. Coal is the economic lifeblood of the Appalachian Mountain region. The topography of Appalachia, with its steep slopes, and at times seemingly inaccessible coal deposits, presents miners with unique problems. Although Appalachian coal is among the highest quality in the world, its inaccessibility has made it very costly in an extremely cost competitive world coal market.

In implementing the Surface Mining Act, the previous administration in Washington, in my judgment, did not pay much attention to the basic intentions of Congress, which was that the States should be given the flexibility to tailor their regulatory programs to recognize their diverse physical conditions.

Upon coming to the Senate, the Virginia Mining and Reclamation Association pointed out to me that the effect of this interpretation was that State law must mirror Federal regulations or else State surface mining programs would not be approved. This ignored the "State window" option.

This was particularly onerous to the Appalachian region with its steep terrain. By enforcing the elimination of the highwalls and insisting on returning land to its approximate original contours, the Federal Government burdened the coal industry with devastating costs and, in effect, prevented much of our needed coal reserves from being mined.

A recently published National Academy of Sciences study entitled "Highwall Elimination and Return To Approximate Original Contour" found the following:

". . . there are situations in which it is not advisable to return completely to AOC or to eliminate the entire highwall".

I cosponsored legislation, S. 1403 in 1979, which would have reinstated Congress' original intent and permitted the States to tailor their mining operations to meet the unique conditions in their States. The legislation passed the Senate twice. It was blocked both times in the House of Representatives.

Relief finally arrived in some form when the Reagan administration agreed with the Virginia surface mining industry and moved to implement by regulation the "State primacy" concept Congress intended.

Today's hearing will focus on surface mining problems, that currently exist.

Call the first witness.

Did I keep within my time allocation?

Mr. Sindelar. The first panel will be the Office of Surface Mining, Mr. Dean Hunt, accompanied by Mr. William B. Schmidt.

STATEMENT OF WILLIAM B. SCHMIDT, ASSISTANT DIRECTOR, PROGRAM OPERATIONS AND INSPECTION, OFFICE OF SURFACE MINING, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LYLE REED, AND DEAN HUNT

Mr. SCHMIDT. Good morning, Senator. My name is William Schmidt. I am Assistant Director for Program Operations and Inspections, and I am representing the Office ot Surface Mining and Mr. Lyle Reed, the Acting Director.

Dean Hunt, Deputy Director, is here with me to assist in any questions that you might have. Dean was Assistant Director for Technical Services until just recently.

If it is acceptable to you, I would like to briefly summarize the statement.

Senator WARNER. Please do.

Mr. SCHMIDT. Thank you, sir.

Of course, we are both pleased to be here today and have the chance to address you and other members of the audience and describe the progress to be made under the Surface Mining Act.

The brief review of the last 3 years of this administration's history with OSM, I think, will show major progress in the areas of regulatory reform, the approval of State programs, the State primacy concept you just spoke of, and also on the implementation of the abandoned mined land program.

As you know, the reform effort which Mr. Hunt headed up has basically been completed. We are in the process now of dealing with some of the court challenges to those revised regulations, but I think they represent in a large measure very streamlined and much more efficient set of regulations than existed prior to the administration assuming responsibility for OSM.

At the present time major emphasis of the Office of Surface Mining is on the oversight of the State programs and also on the implementation of various matters of policy, such as the abandoned mined land program. We have at the present time 25 States with primacy. Twenty-three States have approved abandoned mined land programs. One of the subjects that is covered quite extensively in this material I would like to submit is an area that has been of concern to the State of Virginia. That is the apportionment of the Secretary's share of the abandoned mined land program. This is a major effort that Congress intended to provide for the reclamation of land that had been abandoned prior to 1977. Up until 1981 there was essentially no State program; 1982 began to see more State grant activity. And in the 1985 budget we are proposing $263 million for the abandoned mined land program for State grants. This represents a significant increase in the level of activity on the part of the State, the complexity of projects that are being dealt with by the States and the significant decrease in the Federal Government's involvement in the process of reclaiming abandoned mined land.

We have just distributed to the States and given to the Congress a copy of an apportionment paper. This is a description of the process by which we intend to divide and distribute the Secretary's share of the funds. This paper represents the culmination of about 5 years worth of work by the Office of Surface Mining.

It is keyed to the abandoned mined land inventory, which has been very controversial with the States, and recognition of the States' concerns that their problems are not adequately reflected in the inventory.

We are just now in the process of completing a training program for the States to allow them to revise and update the inventory material. We intend by the first of the year to come out with a new apportionment figure which we hope will reflect very, very closely the ultimate distribution of funds and the true location of problems, one or two problems across the United States.

We are leaving, as I said, we have distributed revised apportionment documents for comment. We are leaving the comment period open for 6 months. That should conclude about November or December 1984. We are committed to working very closely with the States, to examining any comments that they choose to make on the apportionment, and to provide the States with as equitable distribution of the money as we possibly can.

There are a number of other areas of the OSM program that are particularly of concern, particularly to people here in southwest Virginia.

I would like to just briefly touch on some of these elements, and if you have any questions, we will be happy to answer them. One, of course, is the subject you have already mentioned, the approximate original contour issue, elimination of highwalls.

I am pleased to see that you have a representative from the academy to talk about this in more detail. Mr. Hunt can inform you of the status of our regulations. Basically they are unchanged because of the strong requirement that the Congress wrote into the act with regard to the OAC.

The haul road is another issue that is of particular concern here in Virginia. On March 16, 1984 we published notice in the Federal Register approving Virginia's revised haul road policy. As the determination was made that the Virginia rule was effective as the OSM rule, and we believe or hope that many of the problems we have had down here will now be resolved.

Senator **Warner**. That is a hopeful note.

Mr. **Schmidt**. Last issue or two issues actually have to do with permitting. One of the problems we have had since the States have assumed primacy is the repermitting of the entire program operations. We are pleased to note that the State of Virginia has completed its repermitting activity.

Another issue that is of particular concern to a number of the miners down here in southwest Virginia has to do with the recent proposal from OSM to cause permits to be suspended or revoked for failure to pay AML fees. It was at your request we had a hearing down here on the subject. We are presently in the process of completing our analysis, the comments. We expect to have a final ruling about May 31 of this year.

That is it.

[The prepared statement of Mr. Schmidt follows:]

WILLIAM B. SCHMIDT
OFFICE OF SURFACE MINING
TESTIMONY BEFORE THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES
April 18, 1984 - Richlands, VA

Mr. Chairman:

I am pleased to be here today to address a number of issues concerning the implementation of the Surface Mining Control and Reclamation Act of 1977.

In past hearings, the Office of Surface Mining's (OSM) presentations devoted major attention to the policy, organizational, and procedural changes that were taking place in the agency and the effects of these changes. Now, however, these initiatives are in place, and current activities involve implementation of OSM's program within this framework.

A brief review of the last three years at OSM will reveal why we now stress improvements to current programs rather than major policy changes. At the beginning of this Administration, most coal mines were not subject to approved State regulatory programs and State abandoned mine land reclamation programs were nonexistent. The Federal Government was responsible for the major share of regulatory and reclamation program operations. This was clearly not consistent with the intent of

Congress, which expected a steady and speedy transition to State operations in enacting the Surface Mining Control and Reclamation Act (SMCRA). Direct managment of these programs reduced OSM's ability to provide States with technical assistance for developing and operating their own programs, which the Act intended OSM to do. In many respects, then, the programs that the Congress had laid out for OSM and the States was stalled at the post.

The Administration's goals for OSM were ambitious yet clear. The agency was to develop comprehensive regulatory and reclamation programs, to revise the existing burdensome regulations, to provide required oversight and responsive technical assistance, and to reduce direct Federal involvement in program implementation.

These goals are being met. Twenty-five States have achieved regulatory primacy; and all but two coal producing States are operating approved reclamation programs. OSM is emerging as a mature and stable organization that carries out its mandates efficiently and effectively. The agency's regulatory reforms are carrying out the Act's objectives in a manner that is both responsible and reasonable. Innovative approaches to problem-solving are being fostered. The Administration's commitment to support State programs and ensure OSM's continued ability to meet its goal remains firm.

I would like to turn now to some of the issues of concern to the Committee.

APPORTIONMENT

I would like to begin with a discussion of the apportionment of Abandoned Mine Land Fund to the States. We have had correspondence from you and a number of your colleagues on this issue and have held a number of briefings for Members of Congress so I know that this is an issue of great importance to this Committee.

In July of 1983, OSM met with the States and Tribes and provided a draft paper describing the rationale and process by which OSM would be apportioning the Abandoned Mine Land (AML) Fund. Because of the interest expressed by the Congress in the Conference Report which accompanied the Department of the Interior Appropriations Act of 1984, on the apportionment and, in particular, in the use of the AML Inventory in apportioning the Secretary's share, we have reissued the policy in draft to provide the opportunity for additional comments. I hope that you and your Committee will encourage the States and other interested parties to take this opportunity to review the document and comment on its content.

OSM's purpose in developing the apportionment procedures was to provide States and Tribes with the most reliable picture possible of the total monies they might expect to receive through Fiscal Year 1992, so they could more precisely plan the scope and pace of their AML programs. Because of the reduction in State-share balances associated with the growth of the State grant program, OSM must have its apportionment policy in place very quickly. This paper represents the culmination of 5 years of effort by OSM to develop a way to distribute Fund monies which would ensure that all citizens of our country receive equal protection from the most severe problems of previous coal mining. I assure you this has not been an easy task, for the problems, like the level of annual fees paid into the Fund, vary significantly among States. Balancing individual State interests with the needs of the Nation and the intent of Congress has necessitated extensive consulation with numerous individuals and organizations including, of course, the States and Tribes themselves.

OSM carefully considered various bases on which an apportionment might be made and has encouraged States and Tribes to suggest their own methodology for inclusion in the pool of potential approaches to the problems. After reviewing the pros and cons of all options presented, OSM proposed the use of the AML inventory. We recognized, however, that there are many concerns about the accuracy and completeness of the data contained in the Inventory. It is for that very reason that OSM has developed a procedure through which the States may correct and augment that data, thereby affecting the estimated amount of Secretarial-share monies to which they appear entitled. Training of State personnel on the use of this procedure is nearly complete and it is expected that the States will take advantage of this opportunity to update and amend their inventory entries this year. Furthermore, by providing the States and other parties with the opportunity for further comment on the apportionment procedures we are recognizing States' and Tribes' needs for time to modify their Inventory data, and therefore to present as accurate a picture as is possible of the nature and location of our Nation's most serious AML programs.

It has been our policy at OSM to communicate and cooperate with the Congress. In light of the concerns expressed in the Conference Report, we are proceeding as follows:

> First, the apportionment proposal will be kept in draft form for at least six months to allow interested parties additional time for comment;

second, the current version of the draft apportionment will only be used to apportion funds for Fiscal Year 1984 grants and to assist in planning the Fiscal Year 1985 and 1986 grant programs;

third, OSM field offices will work closely and expeditiously with the States and Tribes to process State and Tribe - proposed revisions to the AML Inventory.

At this point, I would like to provide a copy of this document for the Record. I would also like to provide for the Record a copy of the "comment and response" paper we have prepared to deal with a number of general concerns raised by commenters on our earlier solicitation of comments.

In our Fiscal Year 1985 budget, we propose $263 million for State Reclamation Program Grants, an increase from the base of over $27 million. The increase for States is actually greater still, because $42 million of 1984 funds were earmarked for mitigation efforts related to the Centralia Mine Fire. Considered in this light, the net increase from 1984 is over

$69 million, or nearly 36 percent. State reclamation programs have rapidly developed under this Administration and justify the confidence shown in the budget request. The States' efforts are increasingly comprehensive and sophisticated. They are now managing complex projects of the type that only a few years ago appeared likely to be beyond their capabilities. We are maintaining our commitment to seek a level of funding that the States need and can effectively administer. This will ensure rapid reclamation of abandoned mine lands and yield maximum benefits from the revenues anticipated over the life of the program.

There are a number of issues more specific to the implementation of SMCRA in this part of Appalachia which I would like to address today. However, because of the time constraints, I will just briefly mention these issues and be available to answer your questions regarding them.

APPROXIMATE ORIGINAL CONTOUR (AOC) and HIGHWALLS

I am pleased to see representatives of the National Academy of Science here today to discuss their recently released study on highwall elimination which was funded by OSM and the Bureau of Mines.

OSM regulations concerning approximate original contour were not substantially changed during regulatory reform effort. The rules still reflect the requirement of the Surface Mining Control and Reclamation Act that mined-out areas be restored to the approximate original contour and that all highwalls be eliminated.

An exception was provided for preexisting highwalls in remining situation where there just is not enough material available to cover the highwalls completely. This exception is intended to encourage the remining and reclamation of abandoned mining sites. It is currently being litigated is U.S. District Court for the District of Columbia.

HAUL ROADS

On March 16, 1984, a notice was published in the Federal Register approving Virginia's revised coal haul road policy as being as effective as the rule OSM adopted on April 5, 1983.

Under Virginia's revised coal haul road policy, certain haul and access roads are considered as part of the affected area of a mining operation and are included in the acreage calculation for the mine. In some cases, inclusion of the haul road area will, therefore, increase the size of the mining operation beyond the two-acre exemption limitation, and subject the mining operation to the full permitting requirements of the regulatory program.

It should be noted, however, that the revised policy provides that certain roads need not be considered as part of a mining operation for purposes of acreage calculation. These roads are those where:

a. The road has been designated as a public road under the laws of the jurisdiction in which it is located;

b. The road is maintained with public funds and constructed in a manner similar to other public roads of the same type within the jurisdiction where it is located; and

c. There is substantial public use of the road.

PERMITTING

Under the surface mining act, sites on which mining is to be conducted after primacy must be permitted by the State to the standards required by the State's approved regulatory program.

Congress indicated in Section 502 of the Act that is expected the transition from Interim program permits to permanent program permits would occur by the end of the eighth month after primacy. Most States were not able to complete the comprehensive review of permit applications in this period. However, the Congress anticipating this problem provided an exception in Section 506(a).

Section 506(a) provides that a person conducting surface coal mining operations under an interim permit may conduct such operations specified in Section 502(d), if an application for a permit has been timely filed but the required administrative decision has not been rendered. Congress clearly recognized that permitting is a complex and time-consuming procedure that provided for the continuation of existing operations until their permit applications could be properly processed. The Congressionally authorized approach avoids compelling premature decisions by regulatory authorities on whether to grant or deny permit applications. We are pleased tc note that Virginia notified OSM on February 15, 1984, that it had completed its repermitting activities.

ABANDONED MINE LAND FEE COLLECTION

Also, of particular interest in Virginia is a proposed rule which would require the State to initiate proceedings to suspend or revoke an existing permit for a specific mining operation if the operator is delinquent in the payment of reclamation fees owed to the Federal Government. The States already have the responsibility to deny applications for new permits or applications for renewal of permits for failure to pay reclamation fees. We proposed this rule in the belief that the possibility of suspension will enhance operator compliance with SMCRA and avoid the delays and added collection expenses that weaken our collection efforts.

We were pleased to have been able, as you requested Senator Warner, to have held our public hearing on this proposal in Wise, Virginia last January. The public comment period on the rulemaking has closed and we expect to publish the final rule about May 31, 1984.

In conclusion, I am pleased to be here to discuss these and any other issues affecting mining and reclamation efforts in Appalachia. I would be pleased to answer your questions.

Mr. HUNT. I don't have anything to add, Senator. Thank you.

Senator WARNER. Before I proceed, one or two questions. I am very anxious that both of you remain throughout the hearing and following the last witness, I would like to provide you the opportunity to give your observations about the comments that you have heard today.

Now the question is the implementation of the NAS study. What do you see as the procedural steps that have to be taken, assuming there is concurrence in the Office of Surface Mining with that study?

Mr. HUNT. Well, first of all, Senator, the National Academy of Science study does not change any of the provisions of the Surface Mining Act. And in implementing the requirements of the program, that is something that we have to bear in mind. We will complete a review internally with our technical staff of all the findings and recommendations that the National Academy made, and determine whether there is any programatic changes that we can make at the regulatory level or can or should make at the regulatory level. My preliminary review of the document indicates that, quite frankly, there aren't very many changes that were suggested by the National Academy that we can implement, without statutory changes.

Senator WARNER. That is the key question. You feel that if there is a determination that that set of recommendations in whole or in part are advisable for the industry, that you will have to come back to the Congress for a statutory revision?

Mr. HUNT. Yes, sir.

Senator WARNER. You will make that judgment in the process of your review.

Mr. HUNT. The official position has been of the Department that we will not be proposing any changes to the Surface Mining Act, other than those which have already been presented regarding Indian lands legislation primarily in the Western United States. Therefore, I don't know after review of this study, I can't say whether Judge Clark will want to at that point propose any changes to the Surface Mining Act. Right now it is a—we view the NAS study as a technical report that we requested to be done. It becomes part of the data base that we have available to us when we implement the program. We are not seeing that as a basis for us to propose changes to the Surface Mining Act at this time. I only point that out in order for us to implement some of the recommendations of the report; statutory changes would be necessary.

Senator WARNER. All right. Both of you, of course, heard the concerns I expressed about the new—I don't think the word "concern" is correct. You heard my views about the confirmation process of the new Director. I will be fair and objective, but I assure you I hope you in turn convey to him my sentiments that we are unique down here. I intend personally to bring him down at some point and show him the situations.

Just out of curiosity, do you know whether or not he has been down here?

Mr. HUNT. As a matter of fact, he used to work in some eastern mines. In fact, I think underground mines, and some in Pennsylvania, I think he has been throughout the area. So I think his credentials are very good in this area. I think you will find that to be the case.

Senator **Warner**. Now turning to the abandoned mined land program, it has been a concern to us all here in Virginia for some time, particularly the rate at which these funds have been disbursed. Do I interpret from your remarks that you think those funds will be more expeditiously forthcoming to States, and particularly Virginia?

Mr. **Schmidt**. Yes, sir, Mr. Harris, of course, had always made the commitment to the States that he would seek as many dollars as were required by the States to meet their program obligations. I think he left the office very proud of the fact that he had been able to accomplish that. We are in the process now of working on a supplemental for 1984, and we expect again to be able to grant the States all the money they need.

Senator **Warner**. All right.

Do you have any questions?

Ms. **Mason**. No.

Mr. **Sindelar**. No, sir.

Senator **Warner**. Thank you very much, gentlemen.

The next witness will be Danny Brown, Commissioner of the Division of Mined Land Reclamation.

STATEMENT OF DANNY R. BROWN, COMMISSIONER, DIVISION OF MINED LAND RECLAMATION, VIRGINIA DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT, BIG STONE GAP, VA

Mr. **Brown**. Good morning, Senator. My name is Danny R. Brown, Commissioner of the Division of Mined Land Reclamation of the Virginia Department of Conservation and Economic Development.

Senator Warner, on behalf of Governor Charles Robb, for whom I will be testifying today, I wish to express the Commonwealth's appreciation for the opportunity to participate in this fact finding hearing. Implementation of the Federal Surface Mine Act in Virginia has been the primary responsibility of the State since the approval of our regulatory program in December of 1981. The Federal Office of Surface Mining was at that time relegated to an oversight role as intended by Public Law 95–87.

In the comments today, Senator, I will center on the apportionment of the AML secretarial moneys.

This is a follow-up of Mr. Schmidt, which he expressed a great concern of Virginia of the apportionment of AML funds and that is what I want to express to you today specifically.

A major issue of great concern to the State of Virginia is OSM's current proposal to allocate the secretarial share of the AML fund based entirely on the AML national inventory. With the past and current problems that are associated with the inventory, it would be detrimental for Virginia to have the inventory as the sole apportionment tool.

During the past 5 years the Division has been conducting an inventory of abandoned mine lands in the State to reveal mine-related problems affecting health, safety, property, and the environment. As part of the inventory process, data have been submitted to OSM for standardization by the Oak Ridge National Laboratory. Virginia has sharply criticized this standardization in which serious AML problems reported by Virginia were revised and have been deleted from the standardized national data base. Other States have been critical of this standardization as well, because, as in Virginia, AML problems in need of the State's attention may not now be treated due to the standard used to evaluate them.

By using OSM's current proposal, Virginia would receive only 35 percent of its secretarial money which is insufficient considering Virginia's AML problems. We feel that this proposal should be completely revised to meet the needs of all areas damaged by past coal mining.

We suggest implementing the Western Interstate Energy Board proposal which considers historic and current coal production. Under this proposal Virginia and other historically high coal producing States would receive at least 91 percent of its secretarial share moneys. Virginia supports this proposal, and we feel that OSM should consider it as an alternative approach in the allocation of secretarial fund.

That concludes the comments of Virginia at this time, Senator. If there is any question, I will be happy to respond.

Senator WARNER. I am anxious to explore this National Academy of Science study and particularly that portion that relates to the highwalls. What is your view?

Mr. BROWN. Well, sir, we——

Senator WARNER. Have you had a chance to look over that study?

Mr. BROWN. Yes; we did to a certain extent, Senator. I think the biggest thing, we had some input. Some of the members of the academy came to us and we feel that the static safety factor essentially with going all the way back to the highwall, we feel that it might be better that if it were—could be more stable, if you had less of a material all the way back to the highwall.

Senator WARNER. Where do you think is a good cut?

Mr. BROWN. Well, let me say this——

Senator WARNER. It may not be uniform in all instances.

Mr. BROWN. Well, it may not be, but the thing about it, it seems like the problems that we are encountering in the State of Virginia is that the last 10 or 15 feet, that seems to be a problem, not only think it could be, it is dangerous in some areas, but not only that, that last 10 or 15 feet, you wonder sometimes really what you are accomplishing. Now to me, historically the past problems in Virginia has been, spoil on the downslope, uncontrolled areas. Now to me this, in Virginia, is taken care of. It is contained well. Drainage, control placement, compaction, were all taken care of by the State program. I feel the experience we have had in Virginia that the last 10 or 15 feet to us is, being returned to AOC is not a problem if the drainage and everything else is provided for under the State program.

Senator WARNER. Would you recommend that Virginia then try and seek relief from this situation and follow the course of action along this report?

Mr. BROWN. Yes; I would. Of course, you know the Governor has the final say. That is my opinion and I feel that he would think so, because we have, I think we have testified several times before on this matter and some from the very inception of the act.

Senator **Warner**. Now I have traveled extensively over the 5 years I have been in the Senate throughout this area and I have seen I think typical examples of the restoration, at least the attempt to do it. Needless to say, you have had far more experience than I have. You have gone on these sites and seen where they tried to restore up all the way, and now after a period of years the ground has subsided and so forth. Describe some of the situations you have actually seen over a period of time.

Mr. **Brown**. I think in most instances you see the steep slopes is where we still have the problem. You get in a steep slope and you go all the way back to the very top. Then it stands to reason, first of all, that you have got erosion. Because of the steep slope, you have got the velocity, and it increases, the rain, and the sediment run-off. That is a fact of life. It will go down the slope faster. If you have a break, and I think we have said this for many years, if you have a break in that slope and you are controlling that drainage, then to me you are helping the whole situation. You have got a more stabilized condition. What we are saying and what we are having to constantly go back to now in the enforcement mechanism is the trenches, the water velocity going in, and in some places the spoil—you get less compaction at the top and you begin to see a little more—it is not as stabilized as it could be, you know. That is what we are getting, so we get into a problem.

Senator **Warner**. They have a safety problem and have an environmental problem because of the runoff?

Mr. **Brown**. Yes, sir.

Senator **Warner**. Therefore, based on your personal observation and others in your organization, it would be your recommendation that the State of Virginia consider shifting to a policy in some respects reflected by this study?

Mr. **Brown**. Yes, sir, I would.

Senator **Warner**. On the AML funding program, do you find the news today from the previous panels to be encouraging?

Mr. **Brown**. Well, it is always encouraging to hear them say that they would be interested in the comments and what you may have to say to them. You know, the proof of the pudding is when I would really feel pleased.

Senator **Warner**. And the check is in the pocket.

Mr. **Brown**. Yes.

Senator **Warner**. We will work together on that.

Mr. **Brown**. Thank you, sir, I appreciate that.

Senator **Warner**. Thank you.

Next we will hear from Sandy Dysart, executive director of the Virginia Mining and Reclamation Association of Big Stone Gap, VA.

STATEMENT OF SANDY DYSART, EXECUTIVE DIRECTOR, VIRGINIA MINING AND RECLAMATION ASSOCIATION, BIG STONE GAP, VA

Ms. **Dysart**. I am Sandy Dysart, executive director of the Virginia Mining and Reclamation Association. I appreciate the opportunity to appear here today.

Senator **Warner**. May I make a suggestion? Being seasoned from having sat hundreds and hundreds of hours in hearings, these folks are anxious to hear what you have to say. I would suggest that you talk a little slower and use that mike and we will have the full benefit of your remarks.

Ms. DYSART. I appreciate the opportunity to appear on behalf of our association and its 182 member companies. These companies are involved, either directly or indirectly in the mining of Virginia coal.

Since the last oversight hearing and, in fact, since the law was passed, the mining of coal in Virginia has all but become a test for survival. The test is who can continue mining while trying to live under the Surface Mining Control and Reclamation Act. Our comments today will show you why we feel this way.

As the law was passed in 1977, its supporters proclaimed that it was a bill to save the environment and it would accomplish other noble things. Now that we have lived under the law for a number of years, here is what we feel Public Law 95-87 has actually accomplished.

Public Law 95-87 has discriminated among the coal producing regions of the United States and, in particular the Appalachian steep slope region.

It has created another bureaucracy with 750 employees, 13 field offices, 7 district offices, 2 technical centers, and an annual budget of $336 million. It has drastically cut coal production and has locked out an untold number of coal reserves. It has increased coal production costs, increased imports of both oil and coal, destroyed the incentive for job creating investments by the coal industry, and has caused unemployment.

It has infringed on traditional States' rights. It has destroyed private property rights and the values of such property. It has all but destroyed the small coal operator and other small businesses that depend on the industry for support.

When you seriously consider each of these, it is little wonder why our industry is depressed and our unemployment rate is high.

The first area of concern we wish to address is the approximate original contour provision. This is the main concern to us. Public Law 95-87 imposes costly and difficult mining and reclamation standards on steep slope mining. As we have pointed out to you many times before, 95 percent of Virginia's strippable reserves lie on slopes of 20 degrees or better. The effect of this provision has made it impractical and unprofitable to mine much of our coal. Recently the National Academy of Sciences released its results. The committee reported that there are situations in which it is not always advisable to return the area to AOC or to eliminate the entire highwall. It further recommended that greater flexibility be allowed in these cases. We concur with this recommendation.

The AOC provision also ignores the fact that our area desperately needs flat land. In many cases the original contour provision makes the land useless for development. Putting material back against the highwall is contrary to the needs of our area, which we badly need diversification. Mining can create this usable flat land. The opportunity for our region to grow and expand depends on this. Without it, no new business will consider moving into our area or the existing ones cannot look at expansion.

Also the AOC provision frustrates future recovery of coal reserves. After an area is mined and returned to AOC, it is often too costly for a coal operator to remine that area for additional reserves. The result is our region is losing coal reserves that could be recovered if there was flexibility in this requirement.

We do want to comment on other sections. They are lengthy, so I will just briefly summarize them and then I would like to comment on the oversight.

We have commented on section 101, which is the findings; abandoned mine land reclamation, and the bonding, remining section of 402, which addresses the reclamation fee. Sections 507 and 508 with the permitting; 518C, which includes the penalties; 528(2), which takes in the 2 acres, and I would like to comment briefly on that.

Section 528(2) contains an exemption from the requirements of the act for operations affecting 2 acres or less. We believe that the intent of Congress was to provide this exemption for small coal operators. However, OSM has issued regulations which in effect define the 2-acre exemption out of existence. This action forced our association and its small coal operator members into litigation. Attempts to negotiate a reasonable solution has failed in this area. We don't think OSM has any authority in this issue and that issue be left up to the States.

On the oversight, we have been harassed with frivolous violations by parades of OSM inspectors, threats of closure and by threats of program disapproval. Every little detail submitted by Virginia has been scrutinized with a magnifying glass. We have been forced to accept conditions on our program and failure to accept these conditions result in a confrontation between the State and OSM. Although OSM is supposed to assume an oversight role, it will not. It is obvious from their actions that they are paying the over protective mother role and actually want to run the program. Actions by the State will continue to be controlled by what OSM wants, and the States are caught in a precarious position, because if they don't go along with OSM's demands, the result is additional problems for the State.

One thing that I would like to finish with. Virginia has been portrayed as the outlaw State. We are not an outlaw State. We are proud of our mining and reclamation operations, and what we want, what our industry needs is a chance to work with the State on our own program without future intervention by OSM.

Thank you.

Senator **Warner**. That is clear and to the point.

I don't ask this in a totally facetious way. Do you feel that the act has done anything to help the industry?

Ms. **Dysart**. Has done anything at all?

Senator **Warner**. Yes.

Ms. **Dysart**. Not really; I think the enforcement should be left up to the States as to what their particular needs are in that State.

Senator **Warner**. Of course, you know the act came about because the States just weren't doing the job. What Congress has tried to do and what I as an individual have tried to do is strike a balance between the environmental concerns and the industry concerns. That is the reason that we have these oversight hearings, is to go back and determine where that balance is now, which way the scales are tilting.

I repeat the question. Do you feel there has been any benefit flowing from the act?

Ms. **Dysart**. Benefit——

Senator **Warner**. To the environment.

Ms. **Dysart**. There were environmental problems. Everybody in this room knows that. As far as the act correcting those, I don't know. I think eventually those would have been corrected by the State anyway. Section 101 of the act, if you would read that——

Senator **Warner**. I have read it all a couple of times.

Ms. **Dysart**. The findings of Congress was that because of the diversity of terrain, climate, the enforcement should be left up to the States, and that is what we feel it should be.

Senator **Warner**. We are still driving toward those objectives, as I said. We hope this can be done, but I just was curious if you felt there were any portions of this which had been beneficial to the industry. I judge that you do not feel so at this point.

Ms. **Dysart**. Nothing that couldn't have been handled by the State.

Senator **Warner**. Now the subject of the 2 acres, do you feel that, you are being deprived of that exemption unfairly?

Ms. **Dysart**. Well, Virginia has a 2-acre law, chapter 23, which regulates those 2-acre sites. We think it adequately regulates them and it provides environmental protection.

Senator **Warner**. I think we are probably going to hear today fom some people who take the view that section is an area of abuse.

Ms. **Dysart**. I am sure we will.

Senator **Warner**. What is your view?

Ms. **Dysart**. I don't think it is an area of abuse. I think that Congress intended for that section to be in there to provide small coal operators who don't have the funding that the larger coal operators have to get into mining business and operate. I think chapter 23 provides adequate protection and they should be allowed to continue under that.

Senator **Warner**. Well, I think the problem comes as the old adage that beauty is in the eyes of the beholder. These 2-acre plots, when left, hardly measure up to what I believe the State, the present Governor and others would like to see.

Ms. **Dysart**. You are dealing with a very small area there. Most of these, if not all, are underground mines. I take exception to that.

Senator **Warner**. All right. You speak well for your group.

Ms. **Mason**. I just want to ask you an additional question about the 2-acre exemption. Could you explain to me how Virginia interprets the 2 acres? Does that include roads going into the mine?

Ms. **Dysart**. Not at the moment. OSM does.

Ms. **Mason**. OSM?

Ms. **Dysart**. OSM's regulations include the road area.

Ms. **Mason**. But Virginia——

Ms. **Dysart**. Does not.

Ms. **Mason**. Does not. Thank you.

Senator **Warner**. We are now going to have a panel consisting of Mr. Roger Jones, chief engineer of Paramount Coal Corp. Mr. Dave Jordan, president of Red Ash Coal Co. and Dave Benner, head of the environmental program of Clinchfield Coal Co.

Gentlemen, unless you feel otherwise, we will lead off with Mr. Jones and Mr. Jordan and then Mr. Benner. Is that agreeable?

STATEMENT OF ROGER JONES, CHIEF ENGINEER, PARAMOUNT MINING CORP., WISE, VA

Mr. Jones. Senator Warner, my name is Roger Jones and I am chief engineer with Paramount Mining Corp. I have a prepared statement and I have given you copies, and I am going to kind of summarize my statement.

My first comment has to do with my experience and evaluation has revealed that as a whole Virginia has the capability to, and is implementing its approved State program. It is interesting to note that it is the same conclusion reached by the Office——

Senator Warner. I am going to interrupt. I am so anxious—a lot of these people have traveled from afar at personal expense and some inconvenience. Are we able to hear in the back of the room clearly? I am here to try to accommodate you in return for your active participation in this hearing. If we raise the volume a little bit——

Voice. Slower and louder.

Mr. Jones. I will repeat my first statement.

My first comment has to do with my experience and my evaluation has revealed that as a whole Virginia has the capability and is implementing its approved State program. It is interesting to note that this is the same conclusion reached by the Office of Surface Mining in its annual report on Virginia's permanent program dated August 1983.

Virginia's regulatory authority, Division of Mined Land Reclamation, has issued permanent program permit for all coal mining operations still in operation in Virginia as of January 1, 1984.

My second comment is a repeat of a comment I made before this committee in 1981, and I think this comment is still very relevant when considering approximate original contour or AOC. Many areas are extremely hard to return to AOC from the performance standpoint. AOC sounds good to the ears, but, gentlemen, we need the flat benches for future growth and the roads for future access. That last 10 to 20 feet of highwall is hard to return and dangerous for equipment operators. Since AOC has been in effect, I have seen many walls reclaimed to a useless purpose when the flat areas could have been utilized for pasture, farming or resident sites. Also there could be possible future sites for surface or small deep mine operations.

I woud like to state that I agree with the recent National Academy of Sciences report on highwall elimination and return to approximate original contour, and am probably in agreement with Mr. Hunt that some statutory relief in this would have to be done in order to allow these recommendations in full respect.

I will not go into the point of reading each one of those recommendations, but I do have my comments.

Senator Warner. As you know, I have tried twice and I have gotten this thing through the Senate and I am hopeful that my colleagues in the House of Representatives will be helpful in getting it through the House of Representatives.

Mr. Jones. My third comment has to do with section 522, which section generally creates a serious question of condemnation without just compensation. It is understood that the courts intended to review specific cases under this section. However, many operators now know of or have experienced specific cases but are reluctant to bear the expensive court costs to prepare the cases. I hope the new OSM final rules will alleviate some of these problems.

My fourth comment has to do with the new final permanent program rules changes of OSM. To date, many States, including Virginia, have not had an opportunity to review or ask for public participation on these new rule changes or adopt them into their approved programs. Therefore, Virginia operators have not yet worked under these new rules and have seen no changes from the 1981 rules, and have not had this benefit. I, for one, intend to work for adoption of Virginia's approved program for all the final rules that will help make some of the permitting and operating problems more reasonable and flexible.

My fifth comment has to do with OSM's oversight role in Virginia. Currently OSM advises DMLR with 10-day notice that OSM believes a problem or violation exists with an operation. Sometimes the operators will not get copies of the 10-day notice and do not become aware of the process until a notice of violation is actually issued by OSM or DMLR. In order to be fair to the operator, the operator should get copies of all 10-day notices that affect his operation so that appropriate contact can be made.

My sixth comment has to do with my favorite gripe concerning Public Law 95-87 and the regulations promulgated therefrom, and that is the fear of constant shutdown or cessation order of a multimillion dollar operation by an unknowledgeable inspector in the name of prevention of harm to the environment and/or violation of this regulation. When I and many others know that there is essentially no irreparable damage to the environment from coal mining operations, Congress, and more particularly my Congressman, should not be so liberal with cessation authority as to place this authority in the hands of a single person. For example, my reasoning is this: That to a wilderness advocate, a walk path or road is environmental harm, but to a surface coal miner the removal of overburden to produce coal and the replacement of that overburden to reclaim the land in a usable manner is progress and food on the table, not environmental harm. I recommend that this cessation authority be reviewed.

My seventh and final comment has to do with the subject of county haul roads and OSM's overview authority, but could easily be extended to any NOV situation. OSM has approved Virginia's permanent program regulations which deal with county haul roads and the criteria these roads must meet to be exempt from being permitted. I have experienced a couple of situations in which the operator has gained approval from DMLR as the regulatory authority for a haul road access road exemption, yet has been written a notice of violation by the Office of Surface Mining. The operator lives under the threat of OSM shutting down a multimillion dollar operation before final hearings and appeals can be processsed. The operator is put at a disadvantage because he must ask temporary relief from the NOV in front of one of the Department of Interior's administrative law judges, thus seldom dose the operator receive the benefit of the doubt. Therefore, the operator is given the choice of having to permit the road under protest so OSM does not go beyond the arbitrarily set NOV deadline or the 90-day deadline which requires a cessation order to be written.

In this case the permitting of a county road which the operator cannot close because it has been opened to the public with free and common use under Virginia statute and with the road being access to several different property owners, the operator would become liable, for example, for weekend trash dumpers and other public liability.

I recommend that Congress review the role OSM is playing in their oversight role on a State by State basis to assure themselves that oversight has not become our way only.

[The prepared statement of Mr. Jones follows:]

P.O. Box 800
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(703) 679-4200

April 18, 1984

Senator John Warner, Chairman
and
Honored Members of the Senate Subcommittee
on Energy and Mineral Resources

Re: Hearing at Southwest Virginia Community College
April 18, 1984
"The Implementation of the Surface Mining
Control and Reclamation Act of 1977 in
the Appalachian Coal Region"

My name is Roger Jones and I am Chief Engineer with Paramont Mining Corporation. I would like to take this opportunity to thank each of you for again holding this hearing in Southwest Va. and for allowing me and others this opportunity to comment on Public Law 95-87 and its numerous regulations.

My comments deal with many topics, the law and the regulations; and are not necessarily in priority order.

For my first comment, my experience and evaluation has revealed that, as a whole, Virginia has the capability to and is implementing its approved state program. It is interesting to note that this is the same conclusion reached by the Office of Surface Mining in its Annual Report on Virginia's Permanent Program dated August, 1983.

Virginia's Regulatory Authority, Division of Mined Land Reclamation (DMLR), had issued permanent program permits for all coal mining operations still in operation in Virginia as of January 1, 1984.

My second comment is a repeat of a comment I made before this committee in 1981 and I think this comment is still very relevant when considering Approximate Original Contour or AOC. Many areas are extremely hard to return to AOC from the performance standpoint. AOC sounds good to the ears, but gentlemen, we need the flat benches for future growth and the roads for future access. The last ten to twenty feet of highwall is hard to return and dangerous for equipemnt operators. Since AOC has been in effect I've seen many walls reclaimed to a useless purpose when the flat areas could have been utilized for pasture,farming, and/or residential sites. Also, there could be possible future sites for surface or small deep mine operations.

I would like to state that I agree with the recent National Academy of Sciences Report on Highwall Elimination and Return to Approximate Original Contour and their condensed findings are listed below:

1. While restoration to AOC and total elimination of highwalls are nearly always achievable and desirable, and the Committee recommends that they generally be done, there are situations in which it is not advisable to return completely to AOC or to eliminate the entire highwall. Therefore the Committee recommends greater flexibility in the implementation of the Act and regulations to allow for such cases without compromising the long-term environmental stability that is a basic purpose of the Act.

2. In some situations, especially in steep contour mining areas, in order to achieve stability it may be necessary to leave a portion of the highwall. Stability of the backfill should take precedence over complete highwall elimination. If it is not possible both to cover the highwall and to achieve a stable backfill, the backfill should cover the maximum highwall possible with a static safety factor of 1.3 (or 1.5 in a populated area).

3. There are some circumstances in which it is reasonable to leave most or all of the highwall along a portion of the bench if there is strong potential for a suitable postmining land use, as long as the coal in the highwall is covered and surface drainage is controlled. In all such cases, the justification for leaving a portion of the highwall should be clearly stated in an approved postmining land use plan.

4. Highwall elimination and AOC requirements for area mines should be eased where it is necessary to provide for a postmining land use that has been identified and justified in an approved postmining land use plan,

5. Leaving permanent impoundments after mining should be encouraged if they will not cause a significant loss of high-value land, if they are designed for a specific postmining use, if they will have water quality and water level stability appropriate for the intended use, and if they are structurally sound.

6. Mountaintop removal, now considered an exception to the AOC requirement, is often warranted and should be viewed as a normally allowed practice, as long as it is done within the guidelines of an acceptable and long-term postmining land use plan. Postmining land use plans for each mountaintop removal area should be viewed in the context of surrounding land uses, so that the proposed uses of the level area are based on realistic judgments of both short-term and long-term needs.

7. The Committee generally recommends against further efforts to eliminate abandoned highwalls or restore to AOC abandoned mine lands that have stabilized and revegetated. For those abandoned area mined lands that have not revegetated, the Committee favors regrading before attempting to revegetate them, as long as this can be done without adding to erosion problems. The goal should be to restore the surface to a configuration that can be revegetated and that will have public benefits compatible with those of surrounding lands. This can best be achieved in the context of a land use plan.

8. Greater flexibility should be permitted in developing postmining land use plans. Less emphasis should be placed on premining land use patterns, and more consideration should be given to long-term local and regional economic goals and social benefits.

My third comment has to do with Section 522 which section generally creates a serious question of condemnation without just compensation. It is understood that the courts intended to review specific cases under this section. However, many operators now know of or have experienced specific cases but are reluctant to bare the expensive court costs to prepare the cases. I hope the new OSM final rules will alliviate some of these problems.

My fourth comment has to do with the new final permanent program rule changes of OSM. To date, many states, Virginia included, have not had an opportunity to review or ask for public participation on these new rule changes or adopt them into their approved programs. Therefore, Virginia operators have not yet worked under these new rules and have seen no changes from the 1981 rules. Thus, you can see that it is hard for Virginia operators to appreciate any role that the 1981 Oversight Hearings and their comments may have had on the final rules. I, for one, intend to work for adoption into Virginia's approved program all the final rules that will help make some of the permitting and operating problems more reasonable and flexible.

My fifth comment has to do with DSM's oversight role in Virginia. Currently OSM advises DMLR with Ten Day Notices that OSM believes a problem or violation exist with an operation. Operators do not always get copies of Ten Day Notices and do not become aware of the process until a Notice of Violation is actually issued by OSM or DMLR. In order to be fair to the operator, the operator should get copies of all Ten Day Notices that affect his operations so that appropriate contact can be made.

My sixth comment has to do with my favorite gripe concerning PL 95-87 and the regulations promulgated therefrom and that is the fear of constant shutdown or cessation order of a multi-million dollar operation by an unknowledgeable inspector in the name of prevention of harm to the environment and/or you're in violation of the regulations. When I and many others know that there is essentially no irreparable damage(s) to the environment from coal mining operations. Congress and more particular, my congressman, should not be so liberal with cessation authority as to place this authority in the hands of a single person. For example, my reasoning is this; that to a wilderness advocate, a walk path or road is environmental harm but to a surface coal miner the removal of overburden to produce coal and the re-placement of that overburden to reclaim the land in a useable manner, is progress and food on the table, not environmental harm. I recommend that this cessation authority be reviewed.

My seventh and final comment has to do with the subject of county haulroads and OSM overview authority, but could easily be extended to any N.O.V. situation. OSM has approved Virginia's permanent program regulations which deal with county haulroads and the criteria these roads must meet to be exempt from being permitted. I have experienced a couple of situations in which an operator has gained approval from DMLR as the regulatory authority for a haulroad/access road exemption yet been written a Notice of Violation by OSM. Thus, the operator lives under the threat of OSM shutting down a multi-million dollar operation before final hearings and appeals can be processed. The operator is put at a disadvantage because he must seek temporary relief from the N.O.V. in front of one of the Department of Interior's Administrative Law Judges, thus seldom does the operator receive the benefit of the doubt. Therefore, the operator is given a choice of having to permit the road under protest so OSM does not go beyond the arbitarily set N.O.V. deadline or the ninety (90) day deadline which requires a cessation order to be written.

In this case the permitting of a county road which the operator cannot close because it has been open to the public with free and common use under Virginia statute and with the road being access to several different property owners, the operator would become liable, for example, for weekend trash dumpers and other ordinary public liability.

I recommend that congress review the role OSM is playing in their oversight role on a state by state basis to assure themselves that OVERSIGHT has not become OUR WAY ONLY.

Respectfully,

J. R. Jones

J. R. Jones
Chief Engineer
Professional Engineer
Virignia 8101

STATEMENT OF DAVE JORDAN, OWNER, RED ASH COAL CO., RED ASH, VA, ON BEHALF OF THE NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION

Mr. **Jordan**. My name is Dave Jordan and I am a small coal operator and a member of the National Independent Coal Operators Association.

Mr. Chairman, on behalf of the National Independent Coal Operators Association and its members I want to thank you and the subcommittee for giving us this opportunity to bring to the attention of Congress some of the serious problems encountered by the coal mine operators in Virginia under the Federal Surface Mining Control and Reclamation Act of 1977, and enforcement of that act by the Office of Surface Mining of the Department of the Interior.

NICOA's membership is composed primarily of small and medium sized coal operators engaged in underground mining. All of these mines are, of course, subject to extensive Federal regulation under the Federal Coal Mine Health and Safety Act of 1969, and must comply with the stringent body of regulations enforced by the Mine Safety and Health Administration [MSHA] of the U.S. Department of Labor under that act. For the most part, our members work in harmony with the MSHA mine inspectors, most of whom have had extensive mining experience and understand the technical aspects of underground coal mining. Relationships with the OSM enforcement authorities are, however, quite a different story.

Despite the fact that the majority of our members' mines are underground mines rather than surface mines, OSM insists that they must comply with the massive body of regulations promulgated by the Department of the Interior under the Surface Mining Act. By a process of broad interpretation of the language of the act, and with the aid of the Federal courts in Washington, DC, OSM has extended the coverage of the act to underground mines in a manner which most probably was never intended by Congress, or even considered by Congress, when it was in the process of developing the legislative language.

Because this additional regulatory scheme has been superimposed on top of one already in place we are convinced that no other industry group in the United States, or probably the entire world, is so intensely regulated as is the underground coal operator in the Appalachian region. What is more, each and every one of these Federal regulations exacts a price in terms of the cost of producing coal. The result is that Appalachian coal is being priced out of the market both at home and abroad. We have recently seen that some electric utilities in Florida and other Gulf States are signing contracts for large quantities of steam coal from South America countries, such as Colombia, at prices below our own mines must charge in order to remain profitable. Moreover, the once promising European market for U.S. produced steam coal is rapidly slipping away from us under the competitive pressures of lower priced coal from South Africa, Brazil, Australia, and other countries.

Faced with these problems, it has been a constant struggle for Appalachian coal producers to keep their heads above water, and unfortunately, the past few years have seen many of them go under. For some reason, however, this makes little impression on the folks in OSM and the Department of the Interior, whose main purpose in life seems to be to continually pile more regulations on top of those which are already seriously draining the vitality of the coal industry in this area. In short, our own Government is working against us, while the governments of other countries actively support and encourage their coal producers.

Although OSM has ostensibly turned over its regulatory functions to the States that have obtained OSM approval of their State programs, the heavy hnd of the Federal Government continues to be felt. OSM inspectors still roam the coal fields to harass both the State regulatory officials and the coal mine operators, and threaten to suspend State regulatory powers when the State officials disagree with any OSM ruling or interpretation.

We could cite many examples of unnecessary and unreasonable Federal interference by OSM, but the most glaring axample involves an interpretive regulation by which they have effectively wiped out the exemption contained in section 528 of the Surface Mining Act for mining operations which disturb 2 acres or less of surface area. While at first glance this may seem to involve only a very minor segment of the coal industry, its impact on underground mines in Virginia is quite substantial.

Much of Virginia's coal lies in mountain seams at various elevations above the valley floor. Recovery of this coal involves driving a horizontal entry into the mountainside at a point where a coal seam outcrops. In the usual case a small "bench" is cut at the outcrop point on the mountain slope, and entries are driven into the coal seams for perhaps a mile or more underground. The only surface area disturbed by this procedure is the bench at the mine portal and the access road to the bench, so that the total disturbed area is usually less than 2 acres.

Because of the terrain characteristics, and other factors, recovery of the coal in these mountain seams can be most efficiently accomplished by the smaller mine operators with equipment specially designed for working thin coal seams, and NICOA's members have historically carried on this type of mining. Because of the economics of the industry the big coal companies concentrate their operations where much larger coal reserves can be developed, and for very practical reasons they are not willing to commit their capital resources to mining of these small mountainside coal seams. The larger companies frequently contract for the output of the small mines, and thereby provide the small operator with a ready market for his coal. This relationship, which has endured for at least 50 years, has benefitted the people and the economic life of the Virginia coal fields.

OSM has now injected itself into this situation, and has ordered closure of the small underground mines on the grounds that they cannot qualify for the 2-acre exemption from the Federal Surface Mining Act. For purposes of applying the act, OSM contends, all surface areas overlying the underground mine workings of a small mine must be counted for the purpose of calculating whether the mine exceeds 2 acres in size. The obvious result of this OSM interpretation is that no underground mine can possibly qualify for the 2-acre exemption. By thus denying the 2-acre exemption to these small mines OSM is depriving them of the right to exist, for it is not economically feasible for the smaller mine operators to conform with all the numerous regulations of OSM under the act, and particularly the requirements for issuance of mining permits. In order to obtain a mining permit under the OSM requirements, the extensive engineering costs alone would amount to more than $25,000 simply to prepare a permit application, and this would only be the beginning of the cost burden the mine operator must incur. The average small mine operator does not have the financial resources to meet these heavy costs, and there are no rational grounds on which he should be required to do so.

The intent of the Surface Mining Control and Reclamation Act was to protect the environment from the adverse results of surface mining, and in writing the act Congress expressly found that because small surface mine operations of 2 acres or less have a negligible effect on terms of environmental harm it would place an unreasonable burden upon the governmental regulatory agencies, as well as the coal industry, to include these small mine operations within the act's coverage. The intent of Congress on this point is clearly spelled out in the committee reports as well as in explanatory remarks of the sponsors of the surface mining legislation at the time of its enactment.

By forcing closure of small underground mines OSM is thus acting directly contrary to the intent of Congress, and is, in effect, attempting to amend the statute so as to wipe out the exemption. In order to challenge OSM's unlawful application of the act the Commonwealth of Virginia in early 1983 filed a suit for declaratory judgment against OSM and the Secretary of the Interior in the U.S. District Court for the western district of Virginia, and asked that the court enjoin OSM from ordering closure of small mining operations holding valid mining permits under the applicable provisions of the state mining code. After a hearing on the Commonwealth's motion for a preliminary injunction. Judge Glen Williams issued an opinion in which he found that there was no evidence that these small mines were causing or threatening to cause any environmental damage or any risk to public health and safety. Judge Williams further found no justification for the excessive permitting requirements imposed by OSM on these small mines, and noted that the environmental protection provisions of the Virginia Mining Code applicable to these small mines are well suited to serve the public interest. Judge Williams then proceeded to issue a preliminary injunction restraining OSM from continuing to issue closure orders to these small underground mines pending a full scale hearing on the merits.

Although the injunction issued by Judge Williams is currently in effect, the OSM is using every means at its disposal to harass the small mine operators, and has asked the United States Court of Appeals to reverse Judge Williams' injunction order on the technical argument that the language of section 526 of the act vests exclusive jurisdiction to enjoin enforcement of an OSM regulatory order in the U.S. District Court for the District of Columbia. If the Circuit Court agrees with the OSM's contention, the result will be the elimination of small underground mining operations in Virginia, with the accompanying loss of thousands of jobs of miners, and economic distress to the mining communities in this area.

It is indeed sad that a group of regulators in the remote confines of a Government bureau in Washington can thus bring about the destruction of hundreds of small businesses simply by imposing their own contrived interpretation of otherwise clear statutory language. With little regard for the consequences of their actions they can wipe out the life work of individual mine operators and the jobs of the miners they employ.

We believe that the Commonwealth of Virginia has adopted adequate and effective safeguards designed to preclude adverse environmental consequences from the operation of these small mines, and we believe that Congress intended that the States rather than the Federal Government should exercise the authority to regulate such mines. The actions of OSM in superseding State powers in this respect are directly contrary to the obvious statutory intent, and we trust that Congress may take due note of this fact and take whatever action may be necessary to put an end to such bureaucratic abuses of power.

Again, we thank you for the opportunity to be here and express our concerns to your committee.

Senator **Warner**. That is a very clear and explicit statement. It provides a valuable contribution to this record. I am just going to pause a minute. I will ask OSM in due course to comment on your representations here. I think you have summarized it concisely, the problem. Now we will hear from you.

STATEMENT OF DAVID BENNER, MANAGER, ENVIRONMENTAL AFFAIRS, CLINCHFIELD COAL CO.

Mr. **Benner**. Thank you, Senator Warner. My name is David Benner and I am manager for environmental affairs for Clinchfield Coal Co., the largest coal mining company in the State of Virginia which last year mined over 7 million tons of coal. I wish to thank the members of this committee for allowing me the opportunity to present the following comments which will address some items of concern to Clinchfield Coal Co. in particular and, we believe, the coal industry in general.

I would like to summarize this. I have a written statement.

The first concern is the approximate original contour. Clinchfield supports and endorses the recommendations and conclusions set forth in the recently published study by the National Academy of Sciences. As you know, this report best basically echoes those concerns and comments which were made in the oversight hearing in 1981 by various representatives of the coal industry.

Of particular note, Clinchfield wishes to refer to the distinction made by the National Academy of Sciences study between highwall elimination and approximate original contour, which was also echoed 3 years ago by numerous speakers. Actual AOC practices differ from highwall elimination. The practice renders many acres of potentially usable mine lands no more useful than they were prior to mining and deprives the landowner of the right to upgrade their property for higher and better uses.

The sentiment was also echoed by other members of industry in the form of the committee to legalize coal of the Virginia Coal Association when they stated that flat land is at a premium in our region and there is some evidence to indicate that AOC is not environmentally sound in steep slope areas.

I have some quotes from the findings by the National Academy of Sciences. As I say, again I will submit those.

My second concern today is on the revision of the regulations in the State of Virginia and in the Nation. As you know, Senator, since the committee meeting in 1981, the coal industry has seen a change in the attitude and responsibility of the top level officers in the Office of Surface Mining and changes have been made in performance standards. We would like to applaud these at this time. We feel that it shows a more rational approach to regulating the coal industry. However, on the local level we tend to have a problem because the "trickle down" effect has not yet penetrated to our level. For instance, in some of the regulations we are allowed now under the new Federal regulations to take a reduced precipitation event when designing structures, temporary structures. In the past these regulations required us to use a 10- or 24-hour storm event. The new regulation allows us to use a 10-year, 6th hour precipitation event. However, when we sought to use these regulatory changes in the State of Virginia, we were told that OSM enforcement would be forthcoming. We believe that the Virginia program makes it clear that the regulations in the State of Virginia are to be consistent with the Federal regulations and we believe that we should be allowed the opportunity at this time to use these rates. They are environmentally sound and economically more advantageous to companies.

My third concern is on reclamation fees. The Office of Surface Mining proposed a revision of regulation 30 CFR, part 870.9 which deals with reclamation fees under the abandoned mined lands program. This proposed regulation appeared in the November 30, 1983, Federal Register. The most controversial and far reaching effect of this proposed regulation was to designate the responsible party for purposes of payment of reclamation fees.

Clinchfield Coal Co., among other coal operators and associations in Virginia, both in writing and in the subsequent hearing, strongly objected to the effect and manner of implementing this amendment to the regulations. What we would like to object to today is that the Office of Surface Mining is now collecting AML fees based upon the proposed regulations which have not yet been adopted into law.

The Office of Surface Mining was doing this under the guise of interpreting the proposed regulations as nothing more than an interpretive regulation. Clinchfield firmly believes that this proposed regulation is a substantive change in the law and should go through the proper administrative procedures in promulgating it into a regulation.

My fourth concern today deals with personal assessment being levied on individuals working for corporations. We believe that these assessments have no rational basis in their imposed liability upon these individuals. They are based upon violations, notice of violation or cessation orders which we, Clinchfield, were served with and were under circumstances where abatement required was delayed for one reason or another. In all but one instance now under litigation, the abatement work was completed and the cessation orders were terminated and Clinchfield Coal Co. paid the several penalties associated with both notice of violation and cessation order. Yet 3 years after some of these violations were issued, individuals with Clinchfield Coal Co. have been served with personal violations, and assessments. These civil penalties against individuals are based on section 518(f) of the act, which allows for assessments of penalties against individuals who are employed by corporations only if it is shown that those individuals willfully and knowingly authorized, ordered, or carried out such violations, failure, or refusal to comply with the regulation of the Office of Surface Mining.

The personal assessment issued in this instance of Clinchfield's employees are without any foundation or basis in fact or any such allegations, and the imposed assessments against them I feel have severely damaged the reputation of these individuals.

I believe that such irresponsible conduct by OSM at best shows a lack of diligence on their part to justly enforce the Surface Mining Act and its provisions, and at worst is an attempt of some individuals in OSM to use the act to harass not only the coal companies but also those individuals who seek employment in the coal industry. Thank you.

[The prepared statement of Mr. Benner follows:]

COMMENTS FOR SENATOR WARNER'S OVERSIGHT COMMITTEE HEARING

MY NAME IS DAVID BENNER. I AM MANAGER FOR ENVIRONMENTAL AFFAIRS FOR CLINCHFIELD COAL COMPANY, THE LARGEST COAL MINING COMPANY IN THE STATE OF VIRGINIA WHICH LAST YEAR MINED OVER 7 MILLION TONS OF COAL. I WISH TO THANK Senator Warner ~~THE MEMBERS OF THIS COMMITTEE~~ you FOR ALLOWING ME THE OPPORTUNITY TO PRESENT THE FOLLOWING COMMENTS WHICH WILL ADDRESS SOME ITEMS OF CONCERN TO CLINCHFIELD COAL COMPANY IN PARTICULAR AND, WE BELIEVE, THE COAL INDUSTRY IN GENERAL.

1. APPROXIMATE ORIGINAL CONTOUR - BENCH USE

CLINCHFIELD COAL COMPANY SUPPORTS AND ENDORSES THE RECOMMENDATIONS AND CONCLUSIONS SET FORTH IN THE RECENTLY PUBLISHED STUDY PERFORMED BY THE NATIONAL ACADEMY OF SCIENCES REPORTING ON HIGHWALL ELIMINATION AND RETURN TO APPROXIMATELY ORIGINAL CONTOUR. THIS STUDY ECHOES AN NUMBER OF CONCERNS RAISED BEFORE THIS

COMMITTEE IN 1981 BY VARIOUS REPRESENTATIVES OF THE COAL INDUSTRY.

OF PARTICULAR NOTE, CLINCHFIELD WISHES TO REFER TO THE DISTINCTION MADE BY THE NATIONAL ACADEMY OF SCIENCES STUDY BETWEEN HIGHWALL ELIMINATION AND APPROXIMATE ORIGINAL CONTOUR WHICH WAS ECHOED THREE YEARS AGO BY A NUMBER OF SPEAKERS BEFORE THIS SAME COMMITTEE. MR. JOHN BRYAN, DIRECTOR OF ENVIRONMENTAL AFFAIRS FOR THE PITTSTON COAL GROUP WHO SPOKE REPRESENTING THE WEST VIRGINIA COAL ASSOCIATION ON SEPTEMBER 2, 1981, POINTED OUT THEN THAT "ACTUAL AOC PRACTICES WERE DIFFERENT FROM HIGHWALL ELIMINATION. THE PRACTICE RENDERS MANY ACRES OF POTENTIALLY USABLE MINE LAND NO MORE USEFUL THAN IT WAS PRIOR TO MINING, AND DEPRIVES LANDOWNERS OF THE RIGHT TO UPGRADE THEIR PROPERTY FOR HIGHER LAND USES."

THIS SENTIMENT WAS ECHOED THAT SAME DATE BY THE COMMITTEE TO LEGALIZE COAL OF THE VIRGINIA COAL ASSOCIATION WHEN IT STATED THAT FLAT LAND IS AT A PREMIUM IN OUR REGION AND THERE IS SOME EVIDENCE TO INDICATE THAT AOC IS NOT ENVIRONMENTALLY SOUND IN

STEEP SLOPE AREAS. RUNOFF INCREASES BECAUSE THE SLOPES ARE NOT BROKEN AND CONSEQUENTLY MORE SOLIDS ARE INTRODUCED INTO THE WATER REGIME. ADDITIONALLY, IN STEEP SLOPE AREAS POTENTIAL UNUSABLE SITUATIONS ARE CREATED BY AOC. WE FEEL THAT DURING THE DEVELOPMENT OF THE AOC REGULATIONS MORE ATTENTION SHOULD HAVE BEEN PAID TO THE U. S. BUREAU OF MINES REPORT ENTITLED BOND RELEASE CRITERIA WHICH STATED THAT AOC IS NOT THE BEST APPROACH IN STEEP SLOPE AREAS WHERE FLAT LAND IS AT A PREMIUM AND MINING COSTS CAN PRECLUDE THE ECONOMIC EXTRACTION OF A VALUABLE RESOURCE.

THE NATIONAL ACADEMY OF SCIENCES REPORT SUBSTANTIATES AND JUSTIFIES THESE COMMENTS.

THE NATIONAL ACADEMY OF SCIENCES REPORT IN SECTION 9.2.1 (CONTOUR MINING) INCLUDES THE FOLLOWING RECOMMENDATIONS:

> RECOMMENDATION NO. 2 - IN SOME SITUATIONS, ESPECIALLY IN STEEP CONTOUR MINING AREAS, IN ORDER TO ACHIEVE STABILITY IT MAY BE NECESSARY TO LEAVE A PORTION OF THE HIGHWALL. STABILITY OF THE BACKFILL SHOULD TAKE PRECEDENCE OVER COMPLETE HIGHWALL ELIMINATION. IF IT IS NOT POSSIBLE TO BOTH COVER

> THE HIGHWALL AND TO ACHIEVE A STABLE BACKFILL, THE BACKFILL SHOULD COVER THE MAXIMUM HIGHWALL POSSIBLE WITH A STATIC SAFETY FACTOR OF 1.3 (OR 1.5 IN A POPULATED AREA).

IN ADDITION, IN THAT SAME SECTION, RECOMMENDATION NO. 4 PROVIDES AS FOLLOWS:

> THERE ARE SOME CIRCUMSTANCES IN WHICH IT IS REASONABLE TO LEAVE MOST OR ALL OF THE HIGHWALL ALONG A PORTION OF THE BENCH IF THERE IS STRONG POTENTIAL FOR A SUITABLE POST MINING LAND USE, AS LONG AS THE COAL IN THE HIGHWALL IS COVERED AND SURFACE DRAINAGE IS CONTROLLED. IN ALL SUCH CASES THE JUSTIFICATION FOR LEAVING A PORTION OF THE HIGHWALL SHOULD BE CLEARLY STATED AND IN AN APPROVED POST MINING LAND USE PLAN.

THUS, THE NATIONAL ACADEMY OF SCIENCES REPORT HAS RECOGNIZED AT LEAST TWO BASES FOR RELAXATION OF THE PRESENT OSM POLICY OF ABSOLUTE HIGHWALL ELIMINATION:

1. SAFETY - SUBSEQUENT STUDY SINCE THE PASSAGE OF SURFACE MINING ACT IN 1977 CLEARLY INDICATES THAT MAXIMUM SAFETY IS ACHIEVABLE, BOTH WITH RESPECT TO THE RECLAMATION OF THE LAND AND STABILITY OF THE BACKFILL AFTER RECLAMATION CAN BE ACHIEVED BY ALLOWING SOME VARIATION FROM THE ABSOLUTE CRITERIA OF TOTAL

HIGHWALL ELIMINATION. A LIMITED HIGHWALL LEFT AT THE TOP CAN ENHANCE BOTH THE STABILITY OF THE BACKFILL TO BE LEFT AND CAN ALLOW FOR RECLAMATION TO BE CONDUCTED IN A MANNER WHICH ENHANCES THE SAFETY OF THE WORKERS PERFORMING THE RECLAMATION.

2. FLEXIBILITY IN THE REQUIREMENT OF TOTAL HIGHWALL ELIMINATION AND IN THE RESTORATION OF AOC ALLOWS MAXIMUM UTILIZATION OF THE PROPERTY AFTER MINING OPERATIONS HAVE BEEN COMPLETED. SPECIFIC INSTANCES CAN BE POINTED TO WHERE ABSOLUTE AND INFLEXIBLE APPLICATION OF THE REQUIREMENT FOR HIGHWALL ELIMINATION AND RETURN TO AOC DEPRIVES THE OWNER OF THE PROPERTY OF ITS USE AND THEREBY CONSTITUTES A TAKING OF THE PROPERTY FROM THE OWNER WITHOUT EITHER PROPER RECOURSE TO DUE PROCESS OR THE COMPENSATION OF THE OWNER FOR THIS TAKING OF HIS PROPERTY.

2. OSM ENFORCEMENT OF REVISED REGULATIONS

SINCE THE LAST OVERSIGHT HEARING IN 1981, THE COAL INDUSTRY HAS SEEN A CHANGE IN THE ATTITUDE AND RESPONSIBILITY OF THE TOP LEVEL OFFICIALS OF THE OFFICE OF SURFACE MINING IN THE SENSE THAT A RECOGNITION OF THE REALITIES OF THE INDUSTRY HAS RESULTED IN SUBSTANTIAL REGULATORY REFORM AT THE NATIONAL LEVEL. A REVIEW

AND REVISION OF THE REGULATIONS HAVE RECENTLY BEEN ACCOMPLISHED AND THE OVERALL THRUST AND INTENT OF THIS REVISION SHOULD BE APPLAUDED BY INDUSTRY AND, TO SOME EXTENT, HAS RESULTED IN A MORE REASONED AND REASONABLE APPROACH TO THE REGULATION OF THE COAL MINING INDUSTRY. |

~~HOWEVER, IT IS OUR OBSERVATION THAT THIS ENLIGHTENED AP-~~PROACH HAS NOT YET "TRICKLED DOWN" TO THE ACTUAL DAY-TO-DAY ENFORCEMENT AND OVERSIGHT INSPECTIONS INITIATED AND ACCOMPLISHED AT THE REGIONAL LEVELS. OF PARTICULAR NOTE, CLINCHFIELD WISHES TO POINT OUT THAT THE EFFECT OF CERTAIN SPECIFIC REGULATIONS WHICH HAVE BEEN REVISED BY THE OFFICE OF SURFACE MINING AT THE NATIONAL LEVEL HAVE BEEN THWARTED THROUGH THE RELUCTANCE OR REFUSAL TO IMPLEMENT THE EFFECT OF THOSE REGULATIONS BY LOCAL AND REGIONAL LEVELS OF THE OFFICE OF SURFACE MINING. AS AN EXAMPLE OF ONE SUCH SPECIFIC INSTANCE, 30 CFR, SECTION 817.43 PROVIDES FOR THE USE OF THE TEN YEAR SIX HOUR PRECIPITATION EVENT IN DESIGNING THE DIVERSIONS FOR TEMPORARY FACILITIES. THIS REGULATION IS A RESULT OF A REVISION TO THE EXISTING REGULATION WHICH

BECAME EFFECTIVE OCTOBER 21, 1983. ALSO, 30 CFR §817.151 IMPLEMENTED A COST EFFECTIVE CHANGE TO THE DESIGN REQUIREMENTS FOR CULVERTS WHICH WAS ALSO BASED ON THE REDUCED RAINFALL EVENT FOR TEMPORARY STRUCTURES.

HOWEVER, WHEN CLINCHFIELD SOUGHT TO IMPLEMENT THESE CHANGES IN FEDERAL REGULATIONS INTO ITS PERMITS BEING PREPARED FOR THE PERMANENT PROGRAM IN THE STATE OF VIRGINIA, OSM OFFICIALS THREATENED THE DIVISION OF MINED LAND RECLAMATION OF THE STATE OF VIRGINIA WITH ENFORCEMENT ACTION IF THESE FEDERAL REGULATIONS WERE IMPLEMENTED IN THE PREPARATION OF PERMITS UNDER THE PERMANENT PROGRAM. THE BASIS FOR THIS THREAT BY OSM OFFICIALS WAS APPARENTLY THE FACT THAT THE VIRGINIA REGULATIONS HAD NOT YET BEEN AMENDED TO INCORPORATE THE CHANGES MADE IN THE FEDERAL REGULATIONS. YET THE VIRGINIA ACT MAKES IT CLEAR THAT "REGULATIONS SHALL BE CONSISTENT WITH REGULATIONS PROMULGATED BY THE SECRETARY PURSUANT TO THE FEDERAL ACT . . ." (VCA §45.1-230). FROM CLINCHFIELD'S POINT OF VIEW, THIS APPEARS TO BE AN EFFORT BY SOME OSM OFFICIALS TO THWART THE INTENT OF THE REVISED

REGULATIONS THROUGH A TECHNICAL ARGUMENT OF DUBIOUS MERIT. THE EFFECT OF SUCH A RECALCITRANT ATTITUDE BY THE OSM OFFICIALS IS TO RENDER THE CONSTRUCTION NECESSARY TO BRING A PERMITTED SITE INTO COMPLIANCE WITH THE PERTINENT REGULATIONS SUBSTANTIALLY MORE EXPENSIVE AND UNNECESSARILY BURDENSOME.

3. RECLAMATION FEES - COLLECTIONS

THE OFFICE OF SURFACE MINING PROPOSED A REVISION TO REGULATION 30 CFR, Part 870.9 WHICH DEALS WITH RECLAMATION FEES UNDER THE ABANDONED MINED LANDS PROGRAM. THIS PROPOSED REGULATION APPEARED IN THE NOVEMBER 30, 1983, FEDERAL REGISTER. THE MOST CONTROVERSIAL AND FAR REACHING EFFECT OF THIS PROPOSED REGULATION WAS TO DESIGNATE THE RESPONSIBLE PARTY FOR PURPOSES OF PAYMENT OF RECLAMATION FEES. CLINCHFIELD COAL COMPANY WAS ONE OF A NUMBER OF COAL OPERATORS WHO RESPONDED TO THIS PROPOSED REGULATION, BOTH IN WRITING AND IN A SUBSEQUENT HEARING HELD IN SOUTHWEST VIRGINIA, BY OBJECTING TO THE EFFECT AND MANNER OF IMPLEMENTING THIS AMENDMENT TO THE REGULATION.

WHAT CLINCHFIELD WOULD LIKE TO OBJECT TO AT THIS POINT IN TIME IS THE PRESENT PRACTICE OF THE OFFICE OF SURFACE MINING OF COLLECTING AML RECLAMATION FEES BASED UPON THE PROPOSED REGULATION WHICH HAS NOT YET BEEN ADOPTED INTO LAW. IN ESSENCE, THE OFFICE OF SURFACE MINING HAS ADOPTED THIS REGULATION DE FACTO WITHOUT YET RESPONDING TO ANY OF THE COMMENTS MADE BY THOSE WHO RESPONDED TO THE FEDERAL REGISTER NOTICE. THE OSM OFFICE IS DOING THIS UNDER THE GUISE OF INTERPRETING THE PROPOSED REGULATION AS NOTHING MORE THAN A "INTERPRETATIVE REGULATION", NOT IMPLEMENTING A SUBSTANTIVE CHANGE. CLINCHFIELD FIRMLY BELIEVES THAT THIS PROPOSED REGULATION IS A SUBSTANTIVE CHANGE IN THE LAW AND THE OFFICE OF SURFACE MINING SHOULD NOT BE ALLOWED TO IGNORE THE ADMINISTRATIVE PROCEDURES IN PROMULGATING REGULATIONS THROUGH THE USE OF SUCH A DISTORTED INTERPRETATION OF A CHANGE IN THE LAW. CLINCHFIELD IS AWARE SPECIFICALLY OF TWO INSTANCES WHERE COAL MINE OPERATORS HAVE BEEN FORCED TO PAY RECLAMATION FEES OWED BY OTHER COMPANIES, CONTRACTORS OF THOSE OPERATORS, WITH NO JUSTIFIABLE BASIS FOR SUCH REQUIREMENT BEYOND THE

"INTERPRETATION" OF OSM'S POLICY. THESE PARTICULAR OPERATORS WERE FORCED INTO A POSITION BY OSM OF EITHER PAYING THE RECLAMATION FEES WHICH THEY HONESTLY BELIEVE THEY DID NOT OWE, OR LOSE ORDERS FROM COAL CUSTOMERS BECAUSE OSM REFUSED TO ALLOW THE STATE TO ISSUE THE PERMIT TO THE OPERATOR TO PRODUCE SUCH COAL. SUCH ACTION BY A REGULATORY AGENCY IS A GROSS USURPATION OF AUTHORITY WHICH IT DOES NOT HAVE AND THE USE OF SUCH EXTORTIONATE TACTICS IS REPREHENSIBLE. CLINCHFIELD SUGGESTS THAT THIS COMMITTEE SHOULD INVESTIGATE THIS POLICY AND PROCEDURE BY THE OFFICE OF SURFACE MINING IMMEDIATELY.

4. PERSONAL ASSESSMENTS

THE OFFICE OF SURFACE MINING HAS RECENTLY LEVIED PERSONAL ASSESSMENT PENALTIES AGAINST INDIVIDUALS EMPLOYED BY CLINCHFIELD COAL COMPANY. THESE ASSESSMENTS APPEAR TO HAVE NO RATIONAL BASIS IN THEIR IMPOSITION OF LIABILITY AGAINST INDIVIDUALS. CLINCHFIELD HAS REVIEWED EACH OF THE ASSESSMENTS AND, IN EACH CASE, THEY ARE BASED ON NOTICES OF VIOLATION OR CESSATION ORDERS ISSUED AGAINST CLINCHFIELD COAL COMPANY UNDER CIRCUMSTANCES WHERE THE

ABATEMENT REQUIRED WAS DELAYED FOR ONE REASON OR ANOTHER, AND CESSATION ORDERS WERE SUBSEQUENTLY ISSUED. IN ALL BUT ONE INSTANCE NOW UNDER LITIGATION, THE ABATEMENT WORK WAS COMPLETED, THE CESSATION ORDERS WERE TERMINATED AND CLINCHFIELD COAL COMPANY PAID THE CIVIL PENALTIES ASSOCIATED WITH BOTH THE NOTICES OF VIOLATION AND THE CESSATION ORDERS.

YET, IN SOME INSTANCES THREE YEARS AFTER THE VIOLATIONS HAVE BEEN ABATED AND THE PENALTIES PAID, SPECIFIC INDIVIDUALS WHO ARE EMPLOYED BY CLINCHFIELD COAL COMPANY ARE NOW BEING PERSONALLY ASSESSED FOR THESE ALLEGED VIOLATIONS.

THIS ACTION BY THE OFFICE OF SURFACE MINING APPEARS TO BE COMPLETELY ARBITRARY, CAPRICIOUS AND WITHOUT ANY FOUNDATION IN FACT.

THE ALLEGED BASIS FOR THE IMPOSITION FOR THESE CIVIL PENALTIES AGAINST INDIVIDUALS IS SECTION 518(f) OF THE ACT WHICH ALLOWS FOR THE ASSESSMENT FOR PENALTIES AGAINST INDIVIDUALS WHO ARE EMPLOYED BY CORPORATIONS ONLY IF IT IS SHOWN THAT THOSE INDIVIDUALS "WILLFULLY AND KNOWINGLY AUTHORIZED, ORDERED OR

CARRIED OUT SUCH VIOLATION, FAILURE OR REFUSAL . . ." TO COMPLY WITH THE REGULATIONS OF THE OFFICE OF SURFACE MINING. THE PERSONAL ASSESSMENTS ISSUED IN THE INSTANCES OF CLINCHFIELD'S EMPLOYEES ARE WITHOUT ANY FOUNDATION OR BASIS IN FACT FOR ANY SUCH ALLEGATION AND THE IMPOSITION OF SUCH ASSESSMENTS HAS SEVERELY DAMAGED THE REPUTATION OF THESE INDIVIDUALS. SUCH IRRESPONSIBLE CONDUCT BY OSM AT BEST SHOWS A LACK OF DILIGENCE ON THEIR PART TO JUSTLY ENFORCE THE SURFACE MINING ACT AND ITS PROVISIONS AND AT WORST IS AN ATTEMPT OF SOME INDIVIDUALS WITHIN OSM TO USE THE ACT TO HARASS THE COAL INDUSTRY AND THOSE INDIVIDUALS WHO SEEK EMPLOYMENT WITHIN THIS INDUSTRY.

DAVID K. BENNER

Senator **Warner**. That is distressing, but I suppose factual representation of your point of view.

I must tell you, Mr. Jordan mentioned Colombia and I am studying that situation. The potential of that Colombian coal could absolutely destroy this whole industry we have in Virginia, and yet we are having what I view as practically a civil war between OSM and the industry down here. Is that an unfair characterization?

Mr. **Jordan**. No; I think that is totally fair.

Senator **Warner**. As long as that civil war persists and the weaker the industry becomes, the less able this industry will be able to combat Colombian coal in 3 or 4 years when their mines are brought onto full production and the coal is brought into the United States. As a matter of fact, it is being used now in the United States by Florida Light and Power, is it not?

Mr. **Jordan**. Yes.

Senator **Warner**. And they beat your cost?

Mr. **Jordan**. Yes, sir.

Senator **Warner**. I guess Congress has the responsibility to see what we can do about this civil war between OSM and the coal industry.

We will have now the next panel, Mr. Thomas Crane, program director of the Virginia Citizens for Better Reclamation.

STATEMENT OF THOMAS CRANE, PROGRAM DIRECTOR, VIRGINIA CITIZENS FOR BETTER RECLAMATION, WISE, VA

Mr. **Crane**. Good morning. My name is Tom Crane, program director with Virginia Citizens for Better Reclamation. The VCBR has submitted comments on many issues for this hearing. To save time this morning I will briefly discuss just three of these: AML fees collection, the 2-acre exemption, and Virginia's haul road policy.

When Congress passed the Surface Mining Control and Reclamation Act in 1977, it created the abandoned mined land funds to provide for the reclamation of abandoned sites that were mined prior to 1977, where no or inadequate reclamation was done.

Collection of fees has been a major problem for the OSM since the inception of the act. Nationwide, the coal industry owes the Federal Government at least $150 million in AML fees and fines from outstanding violations. In Virginia alone at least $1,960,000 is owed to the AML fund.

In an attempt to develop a more efficient and effective fees collection program, OSM has recently proposed an amendment to its AML fund fee collection requirements. The changes will provide OSM with new administrative and enforcement options giving it added flexibility to collect the outstanding fees that have been difficult to collect in the past. VCBR supports the OSM proposed rule for AML fee collection.

The rule change will give State reclamation agencies the authority to suspend permits at mines where AML fees have not been paid.

Also, OSM is proposing the assessment of charges to cover the cost of processing and handling delinquent fees, and is also proposing raising the interest rate on debts greater than 91 days overdue. These provisions provide the tools for OSM to vigorously pursue the collection of moneys owed the Federal Government.

While VCBR agrees with the proposed amendment, we feel that it may not go far enough toward providing a strong program for AML fee collection.

In addition to requiring the VDMLR to revoke permit applications for operators with outstanding AML taxes, notices of violation should be issued on active sites where AML fees have not been paid. The State of Kentucky has been doing this.

Enforcement actions such as these will provide the OSM and the VDMLR with the flexibility needed to ensure the collection of outstanding AML fees in the future.

On the 2-acre exemption, 2-acre mines have been a problem in Virginia since the inception of the act and they continue to be a problem to the citizens and the environment of southwest Virginia. VCBR has submitted comments and given testimony on the 2-acre exemption many times, and we reaffirm our support of the OSM 2-acre rule today.

The legal dispute between the Commonwealth of Virginia and the OSM will soon be resolved. The suit brought by the State in the Fourth Circuit Court in Richmond has been briefed and argued.

If the fourth circuit rules in favor of OSM, as we believe it will, a major cleanup and enforcement effort will be needed on the majority of the 2-acre mines in violation of OSM's 2-acre rule.

Senator WARNER. That ruling could come off on a jurisdictional question as opposed to getting into the substance. Again, I am speaking from a hasty review of this thing, but if they determine that the district court here in the southwest didn't have jurisdiction, I suppose we are back to square one.

Mr. CRANE. That is true.

Senator WARNER. In essence, the review of the substantive issues will not have been achieved.

Mr. CRANE. Right.

To continue, if the OSM's rule changes——

Senator WARNER. Go ahead.

Mr. CRANE. For the active mines operating under chapter 23, we would expect that they be given adequate time by the OSM to repermit under the permanent program.

Enforcement and cleanup action is called for on 2-acre mines that have finished operating during the dispute, and on active mines that decide not to repermit.

These programs are needed to mitigate the problems and impacts associated with 2-acre mines in Virginia now and in the future.

With regard to VCBR's testimony on coal haul roads, OSM has recently approved Virginia's rule change described in our written statements. However, VCBR believes that the State's approved haul road policy needs to be commented on.

In their 1983 annual report on the Virginia permanent program, OSM mentions as a significant problem area the continued acceptance of deeded county haul roads as public roads by the Virginia Division of Mined Land Reclamation.

A prime example of such practices is the State's action regarding 2-acre mining. The State has allowed and encouraged the practice of coal companies deeding coal haul roads to the county so that they are not counted a part of a 2-acre mine. Such practices not only provide a loophole to industry by which mines greater than 2-acres are exempted from all requirements of the law, but exempt the haul roads as well from such requirements. This irresponsible practice supported by the State has caused significant environmental damage to the lands of southwest Virginia.

To add to this problem, OSM has allowed Virginia to extend the exemption beyond just 2-acre mines, to all coal haul roads, by approving an amendment that effectively exempts coal haul roads from the definition of affected area and permit area.

Virginia apparently justifies their haul road policy by claiming that if a ccal haul road becomes public property, it is subject to the road standards of the local jurisdiction. In fact, county road standards for the most part do not exist, and in the rare cases where standards do exist, they are not designed to preevnt environmental damage from coal trucks and heavy mining equipment.

The approval of Virginia's haul road amendment may very well subject the environment to such adverse impacts as soil and water erosion, and fugitive dust, and shows OSM's lack of concern for their own report findings. Virginia Citizens for Better Reclamation believes that in the future OSM should take its reports on the Virginia permanent program more seriously.

I thank you for the opportunity to testify this morning and I will be pleased to answer any questions that you may have.

[The prepared statement of Mr. Crane follows:]

TESTIMONIES
of
VIRGINIA CITIZENS FOR BETTER RECLAMATION, INC.
on the

IMPLEMENTATION
of the
SURFACE MINING CONTROL AND RECLAMATION ACT of 1977

for

SENATOR JOHN WARNER, CHAIRMAN
of the
SENATE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

April 18, 1984

COAL HAULROAD RULE
AMENDMENT

In their 1983 Annual Report on the Virginia Permanent Program OSM mentions as a significant problem area the continued acceptance of "deeded county haul roads" as public roads by the Virginia Division of Mined Land Reclamation.

A prime example of such practices is the State's action regarding two acre mining. The State has allowed, and encouraged the practice of coal companies deeding coal haulroads to the county so that they are not counted as part of a two acre mine. Such practices not only provide a loophole to industry by which mines greater than two acres are exempted from all requirements of the law, but exempt the haulroads as well from such requirements. This irresponsible practice supported by the State has caused significant environmental damage to the lands of Southwest Virginia.

To add to this problem, Virginia is now attempting to extend the exemption beyond just two acre mines, to all coal haul roads, through a rule change recently submitted to OSM. (30 CFR Part 946 Federal Register 3095-96) The amendment, if approved, will exempt coal haul roads from the definition of "affected area" and "permit area" and their subsequent performance standards.

This Virginia proposed amendment to its program is inconsistent with the Act and the federal regulations. The amendment seeks to allow coal haulroads to be exempt from reclamation performance standards and performance bonds.

These exemptions will subject the environment to such adverse and damaging impacts as soil and water erosion, acid drainage and fugitive dust.

Virginia Citizens for Better Reclamation believes that this proposed amendment is illegal, unwarranted, and contrary to the intent of Congress when it passed the Act.

Virginia apparently justifies this amendment by claiming that if a coal haulroad becomes public property (deeded to the county) that it is therefore subject to the road standards of the local jurisdiction. In fact, county road standards for the most part do not exist, and in the rare cases where standards do exist, they are not designed to prevent environmental damage from coal trucks and heavy mining equipment. VCBR challenges the DMLR or the OSM to produce examples of existing road standards that provide adequate environmental protection.

More to the point, Virginia's rule change to allow the exemption of haulroads from the definition and requirements of the "permit area" is inconsistent with federal regulations. The definition of "permit area" pursuant to 30 CFR 701.5 states:

> Permit Area means the area of land indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under Subchapter J of this chapter and which shall include the area of land upon which the operator proposed to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

Coal haulroads are unquestionably a "disturbed area", which are required to be permitted, and must be covered by a performance bond. This federal rule does not include any provisions for the exemption of haulroads.

Furthermore, the Virginia proposed amendment is inconsistent with the Federal Act itself, for Section 701 (28)(B) states:

> "surface coal mining operations" means: ... (B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, ...(Emphasis added).

The Act clearly includes coal haulroads in the definition of "surface coal mining operation". Section 506(a) of the Act states:

> ...no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program...

While OSM's new definition of "affected area" does allow for the exemption of haulroads if specified criteria are met, the definition of "permit area" does not allow such exemptions.

So, regardless of the interpretation of the new "affected area" definition, or ignorance of the fact that the definition of "permit area" does not allow haulroad exemption, Virginia's proposed amendment does not meet the requirements of the Act, and is not "as stringent as" the federal rules and must be denied by the OSM.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: January 17, 1984.

J. R. Harris,
Director, Office of Surface Mining.

[FR Doc. 84-1994 Filed 1-24-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing a public comment period and opportunity for public hearing on a proposed amendment to the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment relates to the State's revised coal haulroad policy.

This notice sets forth the times and locations that the Virginia program and the proposed amendment are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to the proposed amendment to the Virginia program not received on or before 4:00 p.m. on February 24, 1984 will not necessarily be considered.

A public hearing on the proposed modifications has been scheduled for February 20, 1984 from 7:00 p.m. to 9:00 p.m. at the address listed under "ADDRESSES."

Any person interested in making an oral or written presentation at the hearing should contact Mr. Ralph Cox at the address or phone number listed below by February 15, 1984. If no one has contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing will not be held. If only one person has so contacted Mr. Cox by the above date, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, Highway 23, South, P.O. Box 623, Big Stone Gap, Virginia 24219.

The public hearing will be held in the Conference Room of the Lebanon Area Office, Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24286.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM and State regulatory authority offices listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240
Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219
Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266
Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Drawer U, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088-61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 Federal Register.

On July 27, 1983, Virginia notified OSM of a policy revision to its coal haulroad policy which the State indicated was being made to conform to changes effected by OSM to the Federal rules (Administrative Record No. VA 504). In a letter of August 4, 1983, OSM clarified that the revised policy appeared to adopt some of the provisions of the recently revised Federal definition of "affected area" (48 FR 14821-22, April 5, 1983) and advised the State that such a policy change may necessitate a State program amendment pursuant to 30 CFR 732.17 (Administrative Record No. VA 514).

Following further discussions on the matter, the Director, OSM, has determined that the State's coal haulroad policy is a change in the provision, scope and objectives of the State program which warrant treatment as a State program amendment pursuant to the procedures of 30 CFR 732.17. Therefore, the proposed change by Virginia is subject to the State program amendment process and open for public comment before it can be formally adopted as part of the Virginia program.

The issue of Virginia's coal haulroad policy has a long, complex history, including condition "r" of the Secretary of the Interior's approval of December 15, 1981 (46 FR 61099-61100). In that Federal Register notice the Secretary discussed Virginia's coal haulroad policy as submitted on August 13, 1981, and amended on October 15, 1981 by the State. The Secretary found the policy ambiguous as it related to public use and to maintenance of the road with public funds. As a condition of approval, the Secretary required the State to revise the policy as specified in his December 15, 1981 decision (46 FR 61100). The State, at its option, elected to satisfy the condition through State program statutory and regulatory amendments. *See* 47 FR 36127, August 19, 1982, and 48 FR 46028, October 11, 1983.

The State's proposed policy is similar to that specified in the Secretary's decision except the State is deleting the criterion pertaining to the county within which the road is located having performance standards at least as stringent as the applicable minimum standards as the State regulatory authority for surface coal mining and reclamation operations. Pursuant to the State's letter of July 27, 1983, Virginia indicated that the criterion was being deleted to conform with revisions to the Federal regulations. As discussed above, the change would appear to adopt the three criteria for roads which are contained in the Federal definition of "affected area" at 30 CFR 701.5.

The exact text of the State's proposed coal haulroad policy is as follows:

All roads must be included in the permit area which are used, constructed or significantly imporved for coal haulage or minesite access, except those for which there is substantial (more than incidental) public use and which are actually maintained with public funds in a manner similar to other public roads in the vicinity.

Coal haul and access roads as defined in permanent program regulations Section V701.5 will be considered part of the affected area of an operation and included in acreage calculations thereof unless all of the following conditions are met:

a. The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

b. The road is maintained with the public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and

c. There is substantial (more than incidental) public use of the road.

The foregoing criteria will apply in repermitting of operations previously permitted under the interim program regardless of whether or not a particular road was previously permitted.

If the Director determines that the proposed policy change is consistent with SMCRA and no less effective than the Federal regulations, the policy will be incorporated as part of the approved Virginia program.

Therefore, pursuant to 30 CFR 732.17 and 732.15, the Director requests public comment on the adequacy of the above modification.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Exective Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: January 19, 1984.

James R. Harris,

Director, Office of Surface Mining.

[FR Doc. 84-1983 Filed 1-24-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-008; A-4-FRL 2513-3]

Approval and Promulgation of Implementation Plans; Alabama; Bubble for Union Camp's Prattville Mill

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a revision to the Alabama State Implementation Plan (SIP) under parallel processing procedures. Alabama has requested that EPA approve an emissions trading action (bubble) involving particulate emissions from Union Camp's Prattville, Alabama kraft pulp mill. Approval of the bubble will allow Union Camp to burn more wood waste in its #1 power boiler.

DATES: To be considered, comments must be submitted on or before February 24, 1984.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Alabama Department of Environmental Management, Air Division, State Capitol, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Management Branch at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1982, the Union Camp Corporation's Montgomery office asked the Alabama Department of Environmental Management (ADEM) to consider their proposal for an emissions trading action (bubble). The bubble involves particulate emissions from the #1 power boiler and the #1 recovery boiler at the company's Prattville, Alabama kraft pulp mill. This area (Autauga County) is attainment for the pollutant in question (TSP). The ADEM submitted the proposal to EPA on January 21, 1983, requesting parallel processing. EPA and the State resolved the problem areas in the proposal, and the State submitted approvable revisions on June 22, 1983.

Discussion

The emissions trade (ET) at Union Camp's Prattville plant will not cause a change in total allowable emissions. The following table indicates the allowable emission limits before and after ET:

Source	Before ET (lbs./hr.)	After ET (lbs./hr.)
#1 power boiler	433	[illegible]
#1 recovery boiler	216	[illegible]
Total allowable emissions	649	649

Coalfield Progress December 2, 1982

Evan Mullins

Help!

Dickenson landowner has access problems

By SHARON HATFIELD
Coalfield Progress Staff Writer

HAYSI — A property owner in the Skaggs Branch community who says the road to his home was damaged by a nearby strip mine operation is seeking help in repairing the road.

The plight of 69-year-old Evans Mullins was brought to the attention of the Dickenson County Board of Supervisors recently by District Forest Ranger Charles Saboites.

The supervisors responded by asking Commonwealth Attorney Henry Vanover to investigate the matter.

In an interview at his home Tuesday, Mullins said heavy machinery used on a stripping operation on the mountain above his home made the road to his home nearly impassable. He said coal was hauled off the mountain for "part of two weeks" during November, but he has not seen the workers lately.

One day after the mining took place Mullins got his red pickup stuck and had to get a neighbor to pull him out. "I just didn't know they had left it like that," he said.

"It was a rough road but it was good and solid until they came in with that high lift and messed it up," Mullins charges, adding that he does not know the names of the men who did the mining.

Mullins and his only close neighbor, Arnold Wallace, have been busy since then, rolling boulders out of the road and digging ditches.

Despite their efforts, the drive to Mullins' small house is a bone-jarring affair in a passenger car. After recent rainy weather, rivulets of water meandered through portions of the muddy, rutted road. Broken trees and large rocks also were evident beside the road in several places.

The mile-or-so narrow tract to the Mullins and Wallace households apparently winds through both National Forest property and private property.

According to Ranger Saboites, the road "has been a public road for many and many a year" but is also "a road no one claims."

Officials say the road, which was constructed by the Civilian Conservation Corps in the 1930s, is not maintained by either the county or the state.

Mullins agrees. "Nobody works on it but me," he says. "I guess I've spent over $1,500 on this road since I've been back here."

Mullins hopes the supervisors will allocate some gravel for his road, but says he has been advised he will "just have to law that company and make them gravel it" if the county turns him down.

Records with the Division of Mines and Quarries show that a mining license for a Skaggs Branch operation was granted to S & Y Coal Company, Inc., of Route 2, Box 327, Pound, on Nov. 18, 1982.

According to Assistant Chief Mine Inspector Lewis Wheatley, a DMQ inspector ordered the company on Nov. 10 to cease mining until it obtained a license. The order was written and delivered to Glenn Salyers of Pound. A license application, signed by Johnny W. Yeary of Wise, was filed with DMQ on Nov. 12 and the order was corrected. The license was issued six days later.

According to Wheatley, Yeary is listed on the application as owner and operator of the Skaggs Branch mining operation. Records indicated the operation was leased from Burns Willis.

Yeary was asked yesterday to comment, but he declined to fully discuss the situation. "I have had no complaints made to me personally (about the road)," he said. Yeary added that "We have discussed the matter with our attorney and he is filing papers, so we have no comment."

Saboites said the U.S. Forest Service is in the process of conducting a survey to determine if any mining had occurred on National Forest land. Saboites said the survey is expected to be finished by Dec. 10.

Mike Abbott, a spokesman for the Division of Mined Land Reclamation said yesterday that his agency is also looking into the matter.

"We've had some complaints," Abbott said. "An inspector will be going up there towards the end of the week."

If the inspector believes the operation exceeds two acres, then a survey may be conducted, Abbott explained.

If the investigation determines that more than two acres is

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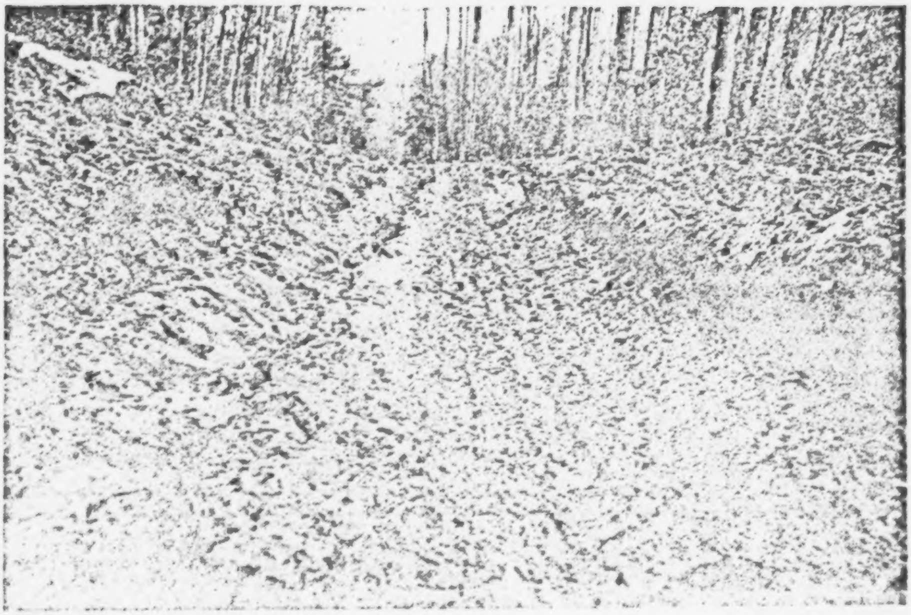


Tire's eye view of Mullins' road

Help with road sought

HELP, from Front Page

disturbed, DMLR might issue notices of violation and direct the company that did the mining to reclaim the site, Abbott said.

(As of Dec. 29, all operations, regardless of size, will fall under some DMLR regulation.)

Commonwealth Attorney Henry Vanover was unavailable for comment yesterday, but Dickenson County Administrative Assistant Jack Rose said the county is concerned with whether a county mine permit has been obtained and coal severance taxes paid.

Rose was uncertain whether the county would gravel the road, noting that there is still some question about who owns it. "Until we can find out what parcel belongs to whom, we really can't take any action," Rose said. "The supervisors would have to know the rights-of-way and have written permission from the landowner before the board would even consider taking equipment in there."

Mullins, who lives on his 9-acre plot without electricity or telephone service, looks forward to getting out of the hollow "almost every day." He is hoping the road can be fixed before the onset of bad weather.

Coalfield Progress November 3, 1983

Coal companies say roads public

CLINTWOOD—The Dickenson County Board of Supervisors agreed Thursday to write the Division of Mined Land Reclamation on behalf of two area coal companies.

The board agreed to write DMLR in regard to four industrial-use roads that also provide access to county residents. The coal companies said the roads were creating maintanence problems for their businesses.

Representatives of Clinchfield Coal Co. and Virginia Iron, Coal and Coke asked the board to write DMLR and inform the agency that public funds were being spent to maintain the roads.

The supervisors agreed to write that they are studying the problem and have already spent public funds on in-kind services.

Bob Mays, a spokesman for Clinchfield, explained that in the past few years, several coal-haul and industrial-use roads have been taken into the county road system and are maintained by coal companies.

Mays pointed out that most of the roads which stop at Clinchfield's various mining operations have permits from DMLR. However, the four Dickenson County roads, one of which serves a VIC operation, continue past the mines and are used for public access.

Mays said DMLR would grant permits for these roads if certain conditions were met, including the fact that citizens use them for access and public funds have been spent on their upkeep.

The amount which must be spent on their upkeep is not specified by DMLR, Mays said.

DMLR has indicated that the coal companies must do something by Nov. 15, although the county would not have to spend any money by that date, Mays added.

Supervisor Bill Patton noted that the county engineer is reimbursed for mileage when he inspects the industrial-use roads periodically.

Public funds are used to pay the mileage for those inspections, which are beyond the engineer's usual duties and could be viewed as "in-kind services," Patton said.

The board then agreed to write DMLR because of the companies' Nov. 15 deadline, but added that the matter would be discussed at future board meetings.

Coalfield Progress February 2, 1984

OSM seeking comments on haul road policy

The Interior Department's Office of Surface Mining (OSM) is seeking public comments on Virginia's revised coal haul road policy.

OSM Director James R. Harris said the revised policy is being considered as an amendment to Virginia's Permanent Coal Regulatory Program and that public comments are invited.

The revised policy provides that all coal haul and access roads will be considered as part of the affected area of a mining operation. They will be included in acreage calculations, including those in determining two-acre exemptions, unless all of the following conditions are met:

- Road has been designated as a public road under the laws of the jurisdiction in which it is located.
- Road is maintained with public funds and constructed in a manner similar to other public roads of the same type within the jurisdiction where it is located.
- There is substantially more than incidental public use of the road.

Harris said that if there is sufficient interest, a public hearing will be held Feb. 21, between 7 p.m. and 9 p.m. at OSM's Area Office in Lebanon, located at Flanagan and Carroll Streets. Those wanting to make a presentation at the hearing should contact Director Ralph Cox of OSM's Field Office in Big Stone Gap by Feb. 15.

The office address in Highway 23 South, P.O. Box 626, Big Stone Gap, Va. 24219, Tel (703) 523-4303. Written comments will be received until 4 p.m. Feb. 24 at the Big Stone Gap office.

Copies of the proposed amendment are available for review Monday through Friday, between, 8 a.m. and 4 p.m., excluding holidays, at the Virginia Division of Mined Land Reclamation, 622 Powell Ave., Big Stone Gap, and at OSM's Washington headquarters, Room 5315, on 1100 L St., N. W. as well as at the OSM offices in Lebanon and Big Stone Gap.

Announcement of the public comment period on the proposed amendment was published in the January 25, 1984 Federal Register.

Bristol Herald Courier March 24, 1984

Road Project Stall Draws Citizens' Ire

By MELANIE CROUCH
Norton Bureau

CLINTWOOD, Va. — Dickenson County officials' concern about spending coal severance tax funds to improve roads over which coal currently is not being hauled has angered a group of citizens who want their road improved.

About 50 people living on Route 689 in Jerry's Branch asked county supervisors Friday not to rescind a resolution passed in December to appropriate $313,000 to widen and pave the road.

When the previous board of supervisors agreed to appropriate money to improve Route 689, coal was being hauled over it, but the company stopped mining operations several weeks ago.

Wilma Mullins, spokeswoman for the citizens, said the company has indicated it will begin mining again in the next few weeks.

However, the supervisors voted to rescind the December resolution and agreed to reconsider the project when coal actually is hauled on the road again.

Supervisor Larry Nowlin, a Republican, opposed suspending the project, calling the other supervisors' action "a ploy to cheat people out of roads they deserve and need."

"They're just trying to undo what the old board did," said Mrs. Mullins.

The current board has three Democrats and two Republicans, while the previous board was dominated by Republicans.

Board Chairman Bill Patton, the only incumbent supervisor, told her no one is trying to prevent the citizens from having their road improved, "but we have to be covered legally."

Clintwood District Supervisor Jim Mullins said though he favors

★ 'Road

Continued From Page 1

the project, several citizens have raised questions about the legality of proceeding with construction.

Mullins, a Democrat, represents one side of Route 689, and Willis District Supervisor Burl Shortt, a Republican, represents the other side.

If construction started when coal was not being hauled on the road, the county would have to reimburse the severance tax fund out of general revenues, "and right now we just can't stand that," Mullins said.

He told the group the $313,000 could be returned to the project once hauling begins. "This is just putting it on hold," said Supervisor Howard Harrison.

[illegible] and Branham of the state highway department said the attorney general has rendered an opinion that at the time of construction, coal must be hauled on roads scheduled to receive severance tax funds.

Patton assured the group the board would support the project if it is legal, but first will seek legal advice. Mrs. Mullins said the citizens, who have fought for road improvements for more than a year, will consult a lawyer as well.

She noted mining operations stop periodically because of permit applications, equipment breakdowns or strikes. "Politics has nothing whatsoever to do with it," she said.

The supervisors also rescinded previous action on an improvement project on Route 789 in Snowball Hollow because coal now is not being hauled on the road.

TWO ACRE EXEMPTION

Two acre mines have been a problem in Virginia since the inception of the Act and they continue to be a problem to the citizens and the environment of Southwest Virginia. Virginia Citizens for Better Reclamation has submitted comments and given testimony on the two acre exemption many times, and we reaffirm our support of the OSM two acre rule today.

When the Federal Surface Mining Control and Reclamation Act was passed, Congress exempted mines of less than two acres in size from regulation. In August of 1982, the Federal Office of Surface Mining (OSM) amended its two-acre rule which redefined and restricted eligibility standards for determining what constitutes a two acre mine.

On October 16, 1983 Virginia's Chapter 23, which is a regulatory package governing state mine sites of less than two acres in size, went into effect.

Although the two acre exemption still exists at the Federal level, the OSM definition of a legitimate two acre mine is much stricter than Virginia's definition.

The Commonwealth has since filed suit against OSM over it's two acre rule, and on June 13, 1983, U. S. District Judge Glen Williams (9th District) granted an injunction to stop OSM enforcement on all two-acre mines in Virginia, except those which are found to be causing serious harm to the environment.

VCBR feels that the OSM definition which considers two or more two acre sites inelligible for the exemption if the drainage from the operations flow into the same watershed at or before a point within five aerial miles, provides the necessary protection against the proliferation of two acre mines experienced in Virginia in the past.

At one time there were over 1000 active two acre mines in the Commonwealth of Virginia. Chapter 23 provides no assurances against this happening again. Although Virginia's definition does not allow two acre mines controlled by the same operator to be contiguous, there are no strict guidelines to prevent an operator from opening several two acre mines in the same general area.

The OSM two acre definition also provides safeguards against large corporations (through subcontracting) opening a series of two acre mines, by requiring each coal company to include the haul road serving the mine in the acreage calculation. Virginia's Chapter 23 does not require haulroads to be included in the acreage calculations for two acre mines, as long as the haulroad has been permitted with another operation. Therefore, under Virginia's rule large companies would be elligible (using subcontractors) to open as many two acre mines as they want, because a haulroad connecting two or more operations does not make the operations contiguous under Chapter 23.

The OSM definition still allows legitimate two-acre operations such as the mom and pop outfits (for which the two acre exemption was probably intended) to open small mines. Virginia's Chapter 23 on the other hand, provides a way for large companies to open mines without having to adhere to the stricter requirements of the permanent program regulations.

The legal dispute between the Commonwealth of Virginia and the OSM will soon be resolved. The suit brought by the State in the

4th Circuit Court in Richmond has been briefed and argued.

If the 4th Circuit Court rules in favor of the OSM, as we believe it will, a major clean-up and enforcement program will be needed for the majority of the two acre mines currently in violation of OSM's two acre rule.

For the active mines operating under Chapter 23, we would expect adequate time be given for the companies to repermit under Virginia's Permanent Program, Chapter 19.

Enforcement and clean-up efforts are called for on two acre mines that have finished operating during the dispute and on active mines that decide not to repermit.

When the court decision is rendered, VCBR will urge the OSM to take timely, forceful action to mitigate the impacts associated with two acre mines in Virginia.

State regulatory agencies already have the responsibility under 30 CFR 786.19(h) (See Condition t, amendment to VA program) to deny permit applications or renewals for companies who fail to pay their AML fees. There were, however, no enforcement actions that the agencies were required to take against active operations that owe AML fees. This rule change addresses the problem by requiring the state agencies to take quick, forceful action when fees are owed.

In accordance with the Debt Collection Act of 1982 (PL 97-365) OSM is proposing the assessment of charges to cover the cost of processing and handling deliquent fees, and is also proposing raising the interest rate on debts greater than 91 days overdue, from 12 percent to 18 percent. These provisions provide the tools for OSM to vigorously pursue the collection of monies owed the federal government.

While VCBR agrees with the proposed amendment, we feel that it may not go far enough toward providing a strong program for AML fee collection.

In addition to requiring the VDMLR to revoke permit applications for operators with outstanding AML taxes, notices of violation (NOV's) should be issued on active sites where AML fees have not been paid. OSM has been doing this on a limited basis in Kentucky and Ohio.

Enforcement actions such as these will provide the OSM and the VDMLR with the flexibility needed to ensure the collection of outstanding AML fees in the future.

Bristol Herald Courier December 3, 1983

Government Eying Tougher Coal Fee Policy

WASHINGTON (AP) — The federal government is examining a plan to get tough with coal companies in an effort to collect $25 million in back fees the companies have avoided paying to reclaim abandoned mines.

Under regulations proposed by the Interior Department, the government would be given power for the first time to suspend operating permits at mines where the fees have not been paid.

The proposed regulations also would boost the interest charged on unpaid fees from 12 percent to 18 percent and allow the government to hire collection agencies to pursue companies with unpaid bills.

"Most operators are honest and are paying," Dick Leonard, a spokesman with Interior's Office of Surface Mining, said Friday. "This will give us the tools to go after those who aren't."

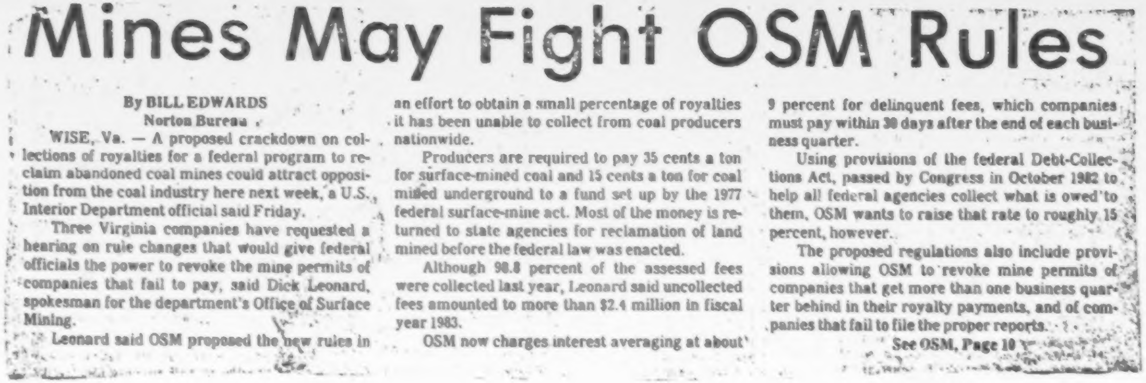
While the government collected $192 million for the Abandoned Mine Land Reclamation Fund in 1983, it was unable to collect another $2.4 million, bringing the total uncollected — with interest charges — to $25 million.

The fund was created by the 1977 Surface Mining Control Act.

The fund was set up to take care of 1.1 million acres of land mined and abandoned before the law took effect. Coal operators have to pay 35 cents a ton on coal which is strip-mined, 15 cents a ton for deep-mined coal and 10 cents for lignite. Half the money collected is returned directly over to the states.

Leonard said the new regulations probably would go into effect in February or March.

Bristol Herald Courier January 21, 1984



Mines May Fight OSM Rules

By BILL EDWARDS
Norton Bureau

WISE, Va. — A proposed crackdown on collections of royalties for a federal program to reclaim abandoned coal mines could attract opposition from the coal industry here next week, a U.S. Interior Department official said Friday.

Three Virginia companies have requested a hearing on rule changes that would give federal officials the power to revoke the mine permits of companies that fail to pay, said Dick Leonard, spokesman for the department's Office of Surface Mining.

Leonard said OSM proposed the new rules in an effort to obtain a small percentage of royalties it has been unable to collect from coal producers nationwide.

Producers are required to pay 35 cents a ton for surface-mined coal and 15 cents a ton for coal mined underground to a fund set up by the 1977 federal surface-mine act. Most of the money is returned to state agencies for reclamation of land mined before the federal law was enacted.

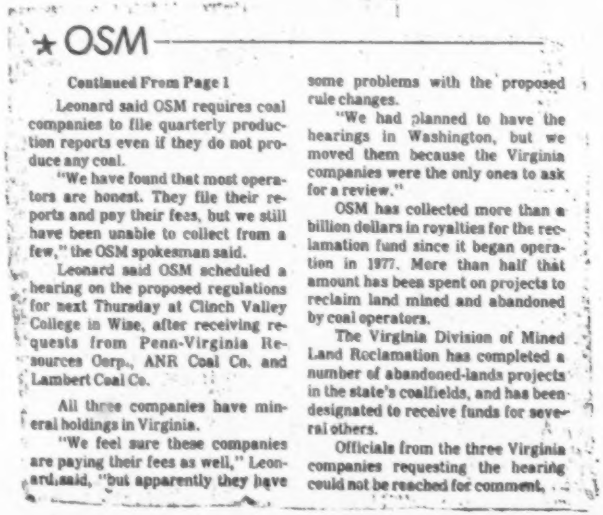
Although 98.8 percent of the assessed fees were collected last year, Leonard said uncollected fees amounted to more than $2.4 million in fiscal year 1983.

OSM now charges interest averaging at about 9 percent for delinquent fees, which companies must pay within 30 days after the end of each business quarter.

Using provisions of the federal Debt-Collections Act, passed by Congress in October 1982 to help all federal agencies collect what is owed to them, OSM wants to raise that rate to roughly 15 percent, however.

The proposed regulations also include provisions allowing OSM to revoke mine permits of companies that get more than one business quarter behind in their royalty payments, and of companies that fail to file the proper reports.

See OSM, Page 10



★ OSM

Continued From Page 1

Leonard said OSM requires coal companies to file quarterly production reports even if they do not produce any coal.

"We have found that most operators are honest. They file their reports and pay their fees, but we still have been unable to collect from a few," the OSM spokesman said.

Leonard said OSM scheduled a hearing on the proposed regulations for next Thursday at Clinch Valley College in Wise, after receiving requests from Penn-Virginia Resources Corp., ANR Coal Co. and Lambert Coal Co.

All three companies have mineral holdings in Virginia.

"We feel sure these companies are paying their fees as well," Leonard said, "but apparently they have some problems with the proposed rule changes.

"We had planned to have the hearings in Washington, but we moved them because the Virginia companies were the only ones to ask for a review."

OSM has collected more than a billion dollars in royalties for the reclamation fund since it began operation in 1977. More than half that amount has been spent on projects to reclaim land mined and abandoned by coal operators.

The Virginia Division of Mined Land Reclamation has completed a number of abandoned-lands projects in the state's coalfields, and has been designated to receive funds for several others.

Officials from the three Virginia companies requesting the hearing could not be reached for comment.

Coalfield Progress January 31, 1984

Coal industry opposes new fee collection regulation

By STEVE MOONEY
Coalfield Progress Staff Writer

WISE — Coal industry officials presented a unified front Thursday against proposed regulatory changes designed to increase the collection rate of delinquent reclamation fees.

The regulations, proposed by the U.S. Interior Department's Office of Surface Mining, would redefine who is responsible for paying fees to a federal fund established for the reclamation of lands mined before 1977.

OSM proposes that the responsible party be the company or individual who owns the coal once it has been mined, regardless of whether it is the actual coal mine operator or the landowner.

Present regulations list only the mine operator as the responsible party.

As a result of the proposed change, coal industry officials argue, owners of small tracts of coal-bearing lands in Southwest Virginia could be held responsible for thousands of dollars in fees left unpaid by mine operators.

Industry officials said they felt the proposed regulations were a "clear attempt to circumvent the intent of Congress by redefining the party responsible" for payment of Abandoned Mined Land Reclamation fees.

The officials also said they feared the proposed regulations would hinder the future development of Southwest Virginia's coal reserves.

The officials made their remarks at a public hearing held at Clinch Valley College. The purpose of the hearing, according to OSM officials, was to "insure public participation" in the regulatory process.

Small operators, lease holders could be hurt

The lawyer for one Abingdon-based coal developer said that if the regulations are adopted, he may begin advising mineral owners not to accept contracts from independent operators who want to mine coal on their properties.

Another attorney, W.R. McCall, who represents L&D Land and Coal Co. and Lambert Coal Co. in Abingdon, said the proposed regulations would "clearly place a detrimental effect upon anyone entering into a lease agreement.

"If these regulations go into effect, there will be no more development of small coal tracts in Southwest Virginia," McCall said.

Sandy Dysart, executive director of the Virginia Mining and Reclamation Association, a 182-member group of small-to-medium sized coal operators, agreed.

Dysart pointed out that much of Southwest Virginia's surface mining is done by small operators who contract from large coal companies. If the regulations go into effect, Dysart said, the small contract mine operators would be much more reluctant to enter into lease agreements.

"This entire set of regulations is an attempt at overkill," Dysart said. "They are just another example of OSM trying to extend its authority where it doesn't belong."

Dysart added that the regulations "would force many small operators to shut down" while industry lawsuits challenged their legality.

"In today's depressed business, a mine out of work for a few days is a mine out of business," Dysart declared.

Shifting of responsibility

Danny Brown, commissioner of Virginia's Division of Mined Land Reclamation, the agency charged with regulating the state's surface mines, objected to a provision requiring his staff to revoke the licenses of mine operators who fail to pay the fees.

"These regulations would cause DMLR to become a federal tax collection agency," Brown said. "We feel the requirements are abrupt and completely arbitrary."

Brown also said the regulations would deny coal operators their right to due process as outlined in Virginia's regulatory program.

John Bryan, director of enviromental affairs for Pittston Coal Co., agreed.

"OSM has simply attempted to shift the responsibility of collection of the fees to another group that is more accessible," Bryan said. "These regulations are an overbroad extension of OSM's

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OSM looks at fee collection

OSM, from Page 1

authority."

Are the new regulations needed?

OSM officials have admitted that "98 percent of the coal operators pay these fees and they pay them on time."

Last year, however, over $2 million in AML fees were not paid by coal operators. Since 1977, more than $25 million in unpaid AML fees have accumulated.

OSM officials say they want to clarify the AML regulations so they can collect this money.

An OSM spokesman recently said the proposed rule changes are part of an effort to use provisions of the federal Debt-Collections Act of 1982, which expands the power of federal agencies to collect what is owed them.

"A small percentage of coal operaters simply won't comply with the law," said OSM spokesman Dick Leonard. "These new regulations will be aimed directly at them . . . we feel we have to do something to enforce the law and this is the course we have chosen. Clearly, our present regulations are not working as they should."

Tom Crane, president of Virginia Citizens for Better Reclamation, agreed with the newly proposed regulations.

"One thing we have to look hard at is the present system of collecting AML fees," Crane said. "It is clearly inadequate . . . VCBR supports OSM's efforts to organize a more efficient system of AML fee collection."

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Land Reclamation Fund; Fee Collection and Coal Production Reporting

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing revisions and amendments to 30 CFR Part 870, regarding the Abandoned Mine Land Reclamation Fund, fee collection requirements and coal production reporting procedures. These changes and amendments are proposed to clarify the party responsible for the payment of reclamation fees under Section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and to provide further administrative and enforcement procedures and options for OSM to ensure a more efficient and effective collection effort. The changes propose certain management activities for the collection of reclamation fees and provide a range of compliance activities that include investigations, reports, audits and debt collection and litigation procedures.

DATE:

Written Comments: Accepted until 5:00 p.m. January 23, 1984.

Public Hearings: Held on request only, on January 9, 1984, at 9:00 a.m. (local).

Public Meetings: Scheduled on request only.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–27), Room 5315, 1100 L St., NW., Washington, D.C. 20240, or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML–27), Room 5315–L, 1951 Constitution Ave., NW., Washington, D.C. 20240.

Public Hearing: Washington, D.C., Department of the Interior Auditorium, 18th and C Streets, NW.

Public Meetings: OSM offices in Washington, D.C., Denver, Colorado, and Pittsburgh, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Room 5401–L, Washington, D.C. 20240. Telephone (202) 343–7944.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures
II. Background
III. Discussion of Proposed Rules
IV. Procedural Matters

I. Public Commenting Procedures

Written Comments

Written comments shall be specific, pertaining only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "ADDRESSES"). Comments received after the time indicated under "dates" or at locations other than the addresses listed above under "ADDRESSES", will not necessarily be considered or included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to testify at the public hearings should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business at least three working days before the date of the hearing. If no one asks to testify at a public hearing at a particular location by that date, the hearing may not be held.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until persons scheduled to speak have been heard. The hearing will end after all persons scheduled to speak and all persons in the audience wishing to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are in the audience at the time all scheduled speakers have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at the OSM office in Denver or Washington by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

II. Background

Title IV of SMCRA establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. The program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Section 402 of SMCRA provides that "all operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the Fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine or 10 cents per ton, whichever is less." Reclamation fees are to be paid no later than 30 days after the end of each calendar quarter beginning with the first calendar quarter occurring after the date of enactment of SMCRA (August 3, 1977) and ending fifteen years after the date of enactment of SMCRA, unless extended by an Act of Congress.

In October 25, 1978, OSM published regulations implementing the Abandoned Mine Land Reclamation Program, 43 FR 49932. Regulations relating to the amount and collection of reclamation fee were promulgated in 30 CFR Part 837 on December 31, 1977, 42 FR 62713. This Part was redesignated as Part 870, 43 FR 49932 (October 25, 1978). Certain provisions of the Abandoned Mine Land Reclamation Program regulations were revised on June 30, 1982, 47 FR 28574. For a detailed discussion of the components of the fee collection program, refer to the preamble discussion in the AML Regulations published June 30, 1982, 47 FR 28574.

III. Discussion of Proposed Rules

New Section 870.9, Responsible Party

The regulations in Part 870 do not contain a formal designation of the party ultimately responsible for paying reclamation fees. The preamble to the regulations (42 FR 62713, December 13, 1977), however, did address the question of fee payment responsibility in the following manner:

> We believe that Congress intended the burden of fee payment to fall upon the person who stands to benefit directly from the sale, transfer, or use of the coal. This intent will guide the Office in making decisions as to who is liable for the fee. The identification of operators will be made in light of the realities of the business world and will not turn solely on a literal interpretation of the word "removes". * * *

> It is anticipated that many of the problems of determining liability for the fee among parties to particular business arrangements will be alleviated as production and supply contracts are negotiated and renegotiated. Contractual agreement for determining liability for the fee may be a helpful guide in determining liability for the fee. * * *

(42 FR 62718)

At that time, OSM anticipated few problems in using the term "contractual arrangements" in making clear-cut determinations as to the person liable for paying reclamation fees. However, there have been problems in making such determinations, resulting in expensive and protracted litigation between OSM and coal companies. Sometimes contracts do clearly delineate responsibility for payment of the reclamation fee, but there are few such clear-cut contractual arrangements. More often, in situations where fee liability is contested, no written contract exists. Even in those cases where there is a contract, it does not ordinarily mention payment of reclamation fees. More often than not, oral "contracts" are alleged by parties who contest fee liability.

In some cases where written contracts do exist, the person who stands to benefit directly from the sale, transfer, or use of the coal has attempted, through contractual agreements, to transfer liability for reclamation fees to other parties. These situations often have resulted in litigation between OSM and coal companies. To solve this problem of uncertain liability, OSM proposes to add a new Section 870.9 to specify the party responsible for reclamation fee payments. This party would be the person or entity which owns the coal under State law after it is severed from any source. This administrative determination parallels the definition of "producer" used by the Internal Revenue Service for collection of the Black Lung Tax.

This new Section would establish that if the mining operation extracting or removing the coal is subject to the provisions of SMCRA, responsibility for the payment of reclamation fees would lie with the person or entity which owns the coal under State law immediately after its removal or extraction. This person or entity would be considered "the operator", as that term is used in Section 402 of SMCRA and elsewhere in 30 CFR Subchapter R of the Secretary's regulations for the Abandoned Mine Land Program. Accordingly, "the operator" or more appropriately stated, "the person responsible for reclamation fee payments" may be the permittee, the person who literally removes the coal, or some other party. The essential determining factor will be whether that person or entity owns the coal under State law immediately after it is severed, extracted or removed. Application of this proposed requirement may be illustrated by the following examples:

Example (1): A, a limited partnership, is the owner of land on which a coal mine is located. A contracts with XYZ Company to extract and deliver the coal for a set price per ton. XYZ Company is an independent contractor and has no ownership interest in the coal mined. Under State law, A is the owner of the coal immediately after severance. After XYZ extracts the coal from the mine, A sells the coal to D, the whom XYZ delivers the coal. A is responsible for the payment of the reclamation fee.

Example (2): A, a limited partnership, is the owner of land on which a coal mine is located. A leases the land to XYZ Company and XYZ Company extracts coal from the mine and sells it. Under State law, XYZ is the owner of the coal immediately after the coal is severed from the ground. XYZ Company must pay the reclamation fee. This is true even though the lease agreement requires XYZ to pay a royalty to *A*.

Example (3): XYZ Company purchases a coal waste refuse pile from *B* and extracts the coal from the waste pile and sells the coal. XYZ must pay the reclamation fee.

Example (4): XYZ Company is a producer of anthracite coal and operates its own cleaning plant. After wet washing the coal, it sells the coal and the silt product. XYZ must pay the reclamation fee on both the coal and the silt product.

Revised 870.15(c), Post Judgment Interest

OSM proposes to retain this Section as in the current rule except that the phrase "* * * or until judgment is rendered by a court of competent jurisdiction in an action at law to compel payment of debts." is proposed to be removed to ensure that all parties understand that OSM reserves the right to collect post judgment interest in all unpaid reclamation fee collection cases.

Revised 870.15(c), Interest Rate Payments

OSM also proposes to add a clarifying provision to § 870.15(c) regarding the accrual of interest on late payments. This new provision provides that interest would accrue on any payment postmarked later than thirty days after the end of the calendar quarter in which the fee was owed. Questions have been raised whether the present ambiguous regulations require that OSM must be in actual receipt of the payment by the 30th day or whether the payment must have been postmarked by this time in order to avoid the interest charges; the proposed change provides that either is sufficient.

New Section 870.15(e), Fee Compliance Actions

OSM proposes to add a new Subsection (e) which would detail new more stringent enforcement and collection efforts against responsible persons for failure to pay overdue fees, including interest on late payments or underpayments, failure to maintain adequate records, failure to file required reports or failure to provide access to records by an operator subject to the requirements of SMCRA. These enforcement and collection options would include: initiation of litigation; reporting to the Internal Revenue Service; State agencies responsible for taxation and credit bureaus; and referrals to collection agencies. OSM could choose one or more of these specific alternatives to encourage compliance with the operator's statutory responsibilities under Section 402 of SMCRA.

New Section 870.15(f), Permits Affected By Fee Debts

OSM is proposing a new § 870.15(f) requiring State Regulatory Authorities to suspend a permit for a specific mining operation if reclamation fees on the coal therefrom are due and owing the Federal Government for more than one month or the required forms have not been filed. That is, if the payment is delinquent on the last day of the month following the month in which the reclamation fee was due, the Regulatory Authority would be required to initiate actions to suspend the permit for the mining operation in question. For example, the fee for the first calendar quarter in 1983 was due on April 30, 1983. If the fee remained unpaid on May 31, 1983, the Regulatory Authority would have been required by this proposal to initiate suspension proceedings for that mining operation on June 1, 1983. Similarly, if a mine report form for the last quarter of 1983 covering production or non-production was not filed, suspension proceedings for that mining operation would also have to have been commenced.

State Regulatory Authorities already have the responsibility under 30 CFR 786.19(h) to deny applications for new permits or applications for renewal of permits for failure to pay reclamation fees. There was, however, on specific enforcement action that the Regulatory Authority could or was required to take against an existing operation which refuses to pay its reclamation fees. This new regulation would correct the problem by providing State Regulatory Authorities the power and duty to take quick decisive action when fee payments are owed.

OSM believes that the possibility of suspension will enhance operator compliance with the statutory requirement of Section 402 of SMCRA and avoid the delays and added collection expenses that weakened the Government's collection efforts. Authority for the proposed action is found in Sections 412(a) (the Secretary of the State has the authority to do all things necessary or expedient to implement and administer the provisions to Title IV) and 510 of SMCRA (permits should not be issued unless all requirements of the Act have been met).

New Section 870.15(g), Penalty on Fee Debts

In accordance with the Debt Collection Act of 1982 (Pub. L. 97–365), this new subsection would impose a six-percent per annum penalty on all fee debts owed under Section 402 of SMCRA as soon as such debts are 91 days overdue. This penalty would be in addition to the interest which begins to accrue at the rate set by the U.S. Treasury, on the 31st day following the end of the calendar quarter for which the fee is due. A penalty of six percent or less is mandated by Section 3(e)(2)(b) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952), as amended by the Debt Collection Act of 1982, Section 11.

New Section 870.15(h), Processing and Handling Charges

OSM is proposing a new § 870.15(h) assessing charges to cover the cost of processing and handling delinquent claims. Authority for this action is found in Section 11 of the Debt Collection Act of 1982, Pub. L. 97–365. The processing would include referrals to the Solicitor's Office, Department of the Interior, as well as private collection agencies. The debtor would be notified in the first demand letter (bill) of the potential penalty and processing charge that would be incurred if the debt remains unpaid.

OSM is proposing to make the amount of the processing charge approximately what OSM must spend to collect overdue fees. The amount of the processing charge would be determined by one of the following methods: (1) If a fee debt is referred to a collection agency, OSM is proposing that the debtor would pay the amount the collection agency charges; (2) if OSM processes and handles a delinquent fee without using a debt collection agency, OSM proposes that the debtor would pay an amount equivalent to that charged by collection agencies for the same or similar services; and (3) in the event a debt is referred to the Solicitor, Department of the Interior, to bring suit for collection of the fee, OSM is proposing a flat processing charge. This processing charge would be based on the then current estimated cost to prepare a debt case for litigation. Though processing costs could fall short of or exceed this average cost in some situations, it would be an administrative burden to cost out each case. Thus, OSM proposes to charge a flat "average" fee for each case of this type, which would reflect expenses incurred by OSM, the Solicitor and any other person (such as a collection agency or asset location company responsible for aspects of collection on behalf of OSM). OSM will also charge a fee for internal administrative collection costs in all cases. Should a debt subsequently proceed to litigation, OSM is proposing to change a flat processing charge based on the estimated cost of litigating each of these debt cases, which would include the aforementioned cost for preparing a debt case for litigation.

All penalties and processing and handling charges imposed and collected on fee debts will go into the Secretary's share of the Abandoned Mine Land Reclamation Fund to reimburse OSM for the cost of collecting fees owed.

Revised Section 870.16(a), Access to Mines, Preparation Plants and Tipples

OSM is proposing to clarify § 870.16(a) so that all surface mining operators subject to the provisions of SMCRA are on notice that they will be required to keep existing records of coal produced, used, bought or sold. The current rule for recordkeeping refers to "operators" and this caused some misunderstanding concerning its scope, particularly its applicability to operators of support facilities. In addition, the current rule implies but does not specifically require that operators keep existing records of purchased coal. By clarifying recordkeeping requirements for all mining operations subject to the jurisdiction of SMCRA, OSM would be able to check production data and thereby lessen the underreporting or nonreporting of production data.

Revised Section 870.16(a)(4), Certification of BTU Value

OSM proposes to revise § 870.16(a)(4) slightly by adding the requirement that an independent laboratory certify the BTU value of a ton of in situ coal at least semi-annually. OSM believes that this frequency requirement is necessary to monitor any changes in the coal seam. The present rule does not have any frequency determination.

Revised Section 870.16(b), Access to Mines, Preparation Plants and Tipples

OSM proposes to revise § 870.16(b) to clarify that OSM Fee Compliance Officers have the authority to review records of all surface mining operations, including preparation plants and tipples, at or near the minesite. Authority for such actions would be derived from Section 412(a) and 701(28) of SMCRA.

The purpose of this revision would be to provide OSM's Fee Compliance Officers (FCO's) with the means to determine the extent to which operations covered by the Act are discharging their statutory responsibilities to report production figures accurately and pay reclamation fees due on all production for each calender quarter. The existing regulations do not provide a means of effectively monitoring all mining operations to ensure compliance with the statutory requirements for reporting production figures accurately and paying full reclamation fees on production for each quarter. Both the criminal penalty provision in Subsection 402(d) of the Act, 30 U.S.C. 1232(d), and the provision in Subsection 402(e) allowing recovery of reclamation fees through a civil debt collection action, would become operative after OSM has determined which operators of mines or tipples have underreported production or underpaid fees.

OSM would be better able to identify those operators who misreport coal production figures if FCO's are granted access to information on sales of coal made by operators to tipple owners. OSM can, in many situations, make better use of its auditing personnel if auditors concentrate on tipples and plants through which coal from several operators moves. Such audits are especially helpful in checking for "wildcatters" and those producers who underreport tonnage of production in order to avoid reclamation fee liability.

Revised Section 870.16(c), Substantiating Records

OSM proposes to revise § 870.16(c) to require all operators of surface mining operations subject to the provisions of SMCRA to make their production and sales records available to OSM's Fee Compliance Officers. This revision would make this subsection consistent with the revisions previously discussed for Section 870.16(b).

Revised Section 870.16(d). Record Maintenance

OSM proposes to revise § 870.16(d) to clearly state that all operators of surface mining operations must maintain their production and sales records for at least six years from the date the fees were due or paid. In addition, this Section would limit the time span for OSM audits to six years assuming that production was reported accurately and fees paid accordingly. The existing rule is ambiguous since it refers to the term "operator" and it does not have a time limit for OSM audits. The proposed time period would not affect cases of fraud or failure to report; in such cases there would be no time limit on the Federal Government's attempts to audit. The six-year period for record maintenance is not to be construed as a statute of limitations for the commencement of an action for recovery of delinquent reclamation fees pursuant to Section 402 of the Act, 30 U.S.C. 1232. Absent Government consent through Congressional action, no period of limitations exists. See, *Guaranty Trust Co. v. United States*, 304 U.S. 126, 132 (1938).

New Section 870.16(e). Estimated Fee

This new subsection proposes a method of assessing reclamation fees in cases where operators fail to maintain adequate records or fail to make such records available for audit purposes. Currently, OSM has no satisfactory method of determining fee liability whenever an operator fails to keep adequate records or refuses access to such records. OSM's only recourse is civil litigation.

This proposed rule would implement a fair method of establishing a fee debt, that would be incurred immediately. In the absense of records, OSM's estimate of fees owed on coal produced would be based upon such factors as mining method used, type of coal produced, and geographical location. Interest would accrue and other charges might be added in the event of non-payment. OSM would add 20% to the estimate of fees to enhance the probability that all rightful fee liability is captured. This method of determining reclamation fee liability is a variation of the penalty assessment used by Kentucky when the State must estimate natural resource tax liability. Kentucky uses any information in its possession, assesses the tax at no more than twice the amount estimated to be due and adds a penalty of ten percent (10%) of the amount of the tax assessed. Rather than double the amount of the estimate, OSM would add 20% as a margin of error.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule would not have a significant economic effect on a substantial number of small entities and, therefore, does not require a Regulatory Flexibility analysis under Pub. L. 96–354. The reasons underlying these determinations are as follows:

The proposed revisions to Part 870 of the Abandoned Mine Land Reclamation Fund regulations would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

National Environmental Policy Act

OSM has been granted a categorical exclusion from the procedures of the National Environmental Policy Act for the subject of reclamation fees imposed by Pub. L. 95–87 (46 FR 7437—January 23, 1981).

Paperwork Reduction Act of 1980

The information collection requirements contained in 870.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0063.

List of Subjects in 30 CFR Part 870

Coal mining, Reporting requirements, Surface mining, Underground mining.

Dated: October 6, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

For the foregoing reasons, it is proposed to amend 30 CFR Part 870 as follows:

PART 870—ABANDONED MINE LAND RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. 30 CFR 870 is amended by adding a new § 870.9, as follows:

§ 870.9 Fee responsibility.

For purposes of reclamation fee liability, if the mining operation is subject to the requirements of the Act, the person or entity in whom is vested the ownership of the coal under State law immediately after the coal is severed, without regard to the existence of any contractual agreements for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties, is responsible for paying the reclamation fees owed under Section 402 of the Act, and is referred to in this Part as the "responsible party".

§ 870.15 [Amended]

2. 30 CFR 870.15 is amended by revision paragraph (c) and adding new paragraph (e), (f), (g), and (h) as follows:

* * * * *

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6–8020.20. The Treasury current value of funds rate is published by the Fiscal service in the Notices section of the Federal Register. Interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All responsible parties, including those with zero production, must submit a completed Coal Production and Reclamation Fee Report (Form OSM–1) as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter in which the fee was owed will be subject to interest.

* * * * *

(e) Failure to pay overdue fees, including interest on late payments or underpayments, failure to maintain adequate records, or failure to provide access to records of a mining operation under the jurisdiction of SMCRA will result in one or more of the following fee compliance proceedings: initiation of litigation, reporting to the Internal Revenue Service, reporting to State agencies responsible for taxation, reporting to credit bureaus, and referral to collection agencies.

(f) the regulatory authority shall initiate proceedings to suspend the permit of any mining operation where reclamation fees on the coal therefrom are overdue, the responsible party is delinquent in making overdue fee payments on the coal thereform, or the responsible party therefor has failed to file the required mine report forms. These actions shall be initiated when the responsible party is delinquent in fee payments on the last day of the mount following the month in which the fee was due.

(g) When a reclamation fee debt is over 91 days overdue, a 6 percent per annum penalty shall begin to accrue on the amount owed for fees and will run until the date of payment. This penalty is in addition to the interest described in paragraph (c) of this section.

(h) For all delinquent fee debts the debtor will be required to pay a processing and handling charge which shall be determined as follows:

(1) For debts referred to a collection agency, the processing and handling charge will be that amount charged to OSM by the collection agency.

(2) For debts processed and handled by OSM, the charge will be a standard amount set annually by OSM based upon similar charges by collection agencies for debt collection.

(3) For debts referred to the Solicitor, Department of the Interior, but paid prior to litigation, the processing charge will be the estimated average cost to prepare the debt case for litigation as of the time of payment.

(4) For debts referred to the Solicitor, Department of the Interior, and litigated, the processing charge will be based on the estimated average cost to prepare and litigate a debt case as of the time of payment.

(5) A processing charge will also be added to cover all other internal administrative expenses associated with collection, including billing, recording payments, and follow up actions.

(6) No interest accrues on any processing fee.

* * * * *

§ 870.16 [Amended]

3. 30 CFR 870.16 is amended by revising paragraph (a), (b), (c), and (d) and adding new paragraph (e) as follows:

(a) The operator of a surface coal mining operation as defined under Section 701(28) of the Act shall maintain, on a current basis, records that contain at least the following information and data:

(1) Tons of coal produced, bought, sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold for fee computation purposes under 870.12 of this Part.

(4) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers shall have access to records of any surface coal mining operation as defined under Section 701(28) of the Act for the purpose of determining compliance of that or any other such operation with the regulations of this part.

(c) The operator of a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552 (b)).

(d) The operator of a surface coal mining operation shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later. Surface coal mining operations will not be subject to audit beyond 6 years after the fee has been paid, provided that production was reported and fees were paid accordingly. There is no time limit for audits where fraud is indicated.

(e) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this Section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20% upward adjustment for possible error.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83-[illegible] Filed 11-29-83; 8:45 am]

BILLING CODE 4310-05-M

the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050). Additionally, On April 20, 1983, The United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association v. Watt*, Civil No. 82-1129, remanded to the Secretary with instructions to rectify the corresponding provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment was required to rectify the matter. In the **Federal Register** (48 FR 27102) dated June 13, 1983, OSM announced its intention to impose a new condition (k) on the approval of the Pennsylvania program to comply with the District court decision. The State responded to OSM's June 7, 1983 letter on July 27, 1983 and advised OSM that it would amend its regulations (PA 86.171) to rectify the matter. In the **Federal Register** dated September 6, 1983 (48 FR 40223) OSM imposed condition (k) and required that Pennsylvania correct its program by August 1, 1984.

Pennsylvania agreed at the time of conditional approval to correct condition (d) by August 1, 1983. However, in a letter dated April 25, 1983, it requested an extension of time to correct condition (d) until February 1, 1984. In the **Federal Register** dated September 12, 1983 (48 FR 40868), OSM granted Pennsylvania the extension.

In a letter dated February 3, 1984, Pennsylvania asked to extend the time until August 31, 1984 to satisfy conditions (d) and (k). Pennsylvania attached a copy of its proposed regulations intended to satisfy conditions (d) and (k), but cannot formally submit these regulations until its rulemaking process can be completed. The Environmental Quality Board adopted the regulations on December 20, 1983, and Pennsylvania anticipates completion of the process by August 31, 1984.

Therefore, the Secretary proposes to allow the State until August 31, 1984, to meet condition (d) pertaining to certain coal mine permit requirements with respect to prime farmland in the anthracite region and condition (k) pertaining to bond release procedures.

The Secretary is continuing to review with the State all of the outstanding program conditions. A final rule implementing this proposed extension may, in response to public comment, be different than the one proposed in this notice.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: (Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: February 24, 1984.

James R. Harris,

Director, Office of Surface Mining.

The following are proposed amendments to 30 CFR, Chapter VII, Subchapter T, Part 938:

PART 938—PENNSYLVANIA

§ 938.11 [Amended]

30 CFR 938.11(d) (1), (2), and (3) are proposed to be amended by substituting "August 31, 1984", for February 1, 1984 each time it appears.

30 CFR 938.11(k) is proposed to be amended by substituting "August 31, 1984", for "August 1, 1984" each time it appears.

[FR Doc. 84-[illegible] Filed 2-28-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Public Comment Period and Opportunity for Public Hearing on a Proposed Modification to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Virginia to satisfy a condition of the Secretary of the Interior's approval of the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a proposed change to the Virginia regulations concerning the authority of the State to deny an application for a permit unless the applicant submits proof that all required Federal reclamation fees have been paid. The amendment is intended to satisfy condition (t).

This notice sets forth the times and locations that the Virginia program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed action, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to the amendment to the Virginia program not received on or before 4:00 p.m. on March 30, 1984, will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for March 26, 1984 at the address listed under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. Ralph Cox at the address or telephone number listed below by March 20, 1984. If no one has contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing will not be held.

If only one person requests a public hearing, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, Highway 23, South, P.O. Box 626, Big Stone Gap, Virginia 24219.

The public hearing will be held in the Conference Room of the Lebanon Area Office, Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266.

Copies of the Virginia program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM and State regulatory authority offices listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219.

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266.

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Drawer U, Big Stone Gap, Virginia 24219.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219. Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 Federal Register.

I. Background

Sections 510(b) and 510(c) of SMCRA limit the issuance of new permits and permit renewals to those applicants who are in compliance with the requirements of SMCRA. As specified in section 402 of SMCRA and Subchapter R of 30 CFR, the operators of coal surface mines are to pay reclamation fees to the Secretary of the Interior. Further, section 402(f) of SMCRA specifically mandates full cooperation with the Secretary by all Federal and State agencies in the enforcement of this provision.

It was brought to the Secretary's attention that the Virginia program does not contain regulatory language consistent with 30 CFR 786.19(h) which requires the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR Subchapter R have been paid. To resolve this issue, on January 4, 1983, the Director, OSM, sent a letter to Virginia to request that Virginia either voluntarily amend its program to add a regulation consistent with 30 CFR 786.19(h), or revise its permitting procedures to ascertain such information prior to approving a permit application. Virginia did not formally respond to the January 4 letter. Therefore, on June 8, 1983, the Secretary proposed to add a new condition to the Virginia program requiring the State to amend its program by a specified date to incorporate requirements no less effective than 30 CFR 786.19(h). See 48 FR 25624.

Pursuant to 30 CFR 732.17(e), the Secretary notified Virginia by letter of June 1, 1983, that a State program amendment was required because conditions or events indicate that the approved State program no longer meets the requirements of SMCRA and the Federal regulations. Therefore, pursuant to 30 CFR 732.17(f)(1), Virginia was required to submit to the Secretary within 60 days of receipt of notification either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of SMCRA and the Federal regulations, and a timetable for enactment which is consistent with established administrative or legislative procedures.

On August 1, 1983, Virginia responded to OSM's June 1, 1983 letter. The State's letter indicated that it would propose to amend the Virginia permanent program regulations at V786.19 to add a new Subsection (o) stating "the applicant has submitted proof that all reclamation fees lawfully required under Title IV of the Federal Act have been paid." The letter indicated that the amendment would be subject to the State's administrative procedures, thus a completion date of March 1, 1984, to satisfy the condition was requested. Inasmuch as Virginia agreed to submit such an amendment within the State's established administrative procedures, the Secretary granted a date of March 1, 1984, to Virginia to submit an amendment to the State's regulations to satisfy the condition (48 FR 39222, August 30, 1983).

II. Submission of Amendment To Satisfy Condition

On February 10, 1984, Virginia formally submitted a State program amendment to satisfy condition (t). The amendment consists of a proposed revision to the State's regulations which adds to section V786.19, Criteria for Permit Approval or Denial, a new part (o) stating that "the applicant has submitted proof that all reclamation fees lawfully required under Title IV of the Federal Act have been paid." Virginia indicated that the amendment would become effective upon approval by the Secretary.

Therefore, pursuant to 30 CFR 732.17 and 732.15, the Director seeks public comment on whether Virginia's regulation revision is no less effective than the Federal regulations. If it is determined that the amendment is no less effective than the Federal requirements, the amendment will be approved and incorporated as part of the approved Virginia permanent regulatory program, and condition (t) will be removed.

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by

the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: February 23, 1984.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 84-[illegible] Filed 2-28-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 264

Property Management; Mount St. Helens National Volcanic Monument Symbol

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an official symbol for the Mount St. Helens National Volcanic Monument and restrict use of the symbol to the Forest Service, U.S. Department of Agriculture. The rule is needed to protect the symbol from inappropriate commercial use. Under the rule, any unauthorized use could be subject to criminal penalty.

DATE: Comments must be received on or before April 30, 1984.

ADDRESS: Comments and inquiries should be addressed to R. Max Peterson, Chief (1900), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: E. Delmar Jaquish, Deputy Director, Public Information and Involvement, (202) 447-3760.

SUPPLEMENTARY INFORMATION: The Gifford Pinchot National Forest has developed a symbol for the Mount St. Helens National Volcanic Monument to identify the visitor center, publications and other public services provided by the Forest Service in the area.

Based on its day-to-day management experience in the Monument area, the Forest Service has concluded that it is in the public interest to reserve the Mount St. Helens symbol for official Government use only. Intense commercialization has followed the Mount St. Helens volcanic eruption, and there is strong likelihood that, unless use of the Government's official symbol is protected, it will be displayed on souvenirs of all types and quality and offered for sale by commercial vendors. Reserving the symbol of official Government use will avert those commercial uses of the symbol that would be inappropriate to the monument's status as a significant national area and will assist the visiting public in clearly identifying the Government's role in managing the monument and offering public services in the area.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this proposed rule is not a major rule and does not require a regulatory impact analysis. The proposed rule will have little or no effect on the Nation's economy or substantial numbers of individuals or businesses because its application is limited to one relatively small geographical area.

Small Entity Impact

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore a regulatory flexibility impact analysis is not required.

Environmental Impact

The proposed rule does not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Burden

The proposed rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 264

Seals and insignia and Signs and symbols.

PART 264—PROPERTY MANAGEMENT

For the reasons set forth above, Part 264 of Title 36, Chapter II, is proposed to be amended by adding a new Subpart B to read as follows:

Subpart B—Mount St. Helens National Volcanic Monument Symbol

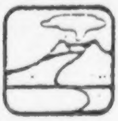
Sec.
264.10 Establishment.
264.11 Use of symbol.
264.12 Use without permission.
264.13 Unauthorized use.

Authority: 5 U.S.C. 301.

Subpart B—Mount St. Helens National Volcanic Monument Symbol

§ 264.10 Establishment.

There is hereby established an official symbol, as depicted herein, to designate and represent the Mount St. Helens National Volcanic Monument located in the Gifford Pinchot National Forest in the State of Washington.



§ 264.11 Use of symbol.

Except as provided in § 264.12 use of the Mount St. Helens National Volcanic Monument official symbol, including a facsimile thereof, in total or in part, is restricted to official signs, publications, and other materials of the Forest Service, U.S. Department of Agriculture.

§ 264.12 Use without permission.

Business or calling cards commercially prepared at employee expense for employees assigned to the Volcanic Monument may depict the official Monument symbol without special permission from Forest Service officials.

§ 264.13 Unauthorized use.

Except as provided in §§ 264.11 and 264.12, whoever manufactures, sells, or possesses the official symbol of the Mount St. Helens National Volcanic Monument may be subject to criminal penalty under 18 U.S.C. 701.

Dated: February 14, 1984.

John R. Block,

Secretary.

[FR Doc. 84-[illegible] Filed 2-28-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2892/3E2911/P323; PH-FRL 2530-6]

Permethrin; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodities eggplant, bell peppers and range

PERMITTING PROCEDURES

Lack of consistency in permitting has been a troublesome issue for OSM in overseeing the individual state programs. In its 1983 annual report on the Virginia Permanent Program, OSM acknowledges the fact that a major problem area is Virginia's issuance of permanent program permits which contain provisions inconsistent with the state program.

Virginia Citizens for Better Reclamation believes this to be a serious problem compounded by the fact that the VDMLR was required to act hurriedly on all of the conversion permits (Interim Program) by January 1, 1984 to meet the deadline for repermitting, mandated by the Virginia Secretary of Commerce and Resources. VDMLR is to be commended for meeting their deadline.

As of January 23, 1984, 831 applications for permanent program permits (Chapter 19) had been submitted and acted on by VDMLR. Of the 831, 762 were conversion applications. Of these, 483 were issued, 229 withdrawn and 50 denied. An administrative decision had been made on all 762 conversion applications to meet the January 1, 1984 deadline. However, this task was not accomplished without some consequences. VDMLR had to act on a large number of permits over a very short period of time. Indeed, on November 4, 1983 only 301 permits had been issued, 51 withdrawn and 10 denied, and many of these permits may have been acted on before VDMLR was ready.

Thus, VCBR feels that the approval of deficient permit packages is one of the largest problem areas of the Virginia program. Although we are generally pleased with VDMLR's efforts to bring the conversion applications into compliance with the permanent program, VCBR feels that the VDMLR was forced into rubber stamping permit applications in order to meet their January deadline.

For example, two administrative hearings have been requested by citizens challenging the issuance of a permit. One of these VCBR was involved in. A refuse disposal area was permitted in Dickenson County over the objections of a couple who claim the site represents a health and safety hazard. At an informal conference in November of 1983, the couple outlined their concerns to the VDMLR. However, the permit was approved on December 29, 1983 without the VDLMR responding to the couple's complaints. (Rapoca Energy Company Permit #1300504)

All of this was brought to the attention of a hearing officer on February 23, 1984 in the administrative hearing. The VDMLR testified that indeed there were discrepancies in the permit and that no effort had been made to verify the allegations of the plaintiffs.

In Lee County a permit was approved even though the company had destroyed a woman's water supply and had not replaced it, required under V816.54 of the regulations. (Straight Creek Processing Company Permit #1300487) Also, in Lee County, a permit was approved even though the VDMLR had been notified of discrepancies in the water supply inventory. (Miller's Cove Energy Company Permit #1100154)

Virginia Citizens for Better Reclamation believes that these examples show a need for increased oversight of Virginia's permitting procedures. VCBR urges OSM to act in a reasonable fashion to correct these permitting problems.

Another problem area is Virginia's unwillingness to deny permit applications for operations that have outstanding violations. Section 501(c) of the Act requires that permits not be issued to companies who are currently in violation of the Act.

Historically, Virginia has experienced wide spread problems of operators violating the law, running from company to company to get around the requirements of the Act. Typically, an operator would mine coal under one company, go out of business and start up again under a new company name. This practice was particularly prevalent between 1977 and 1981.

Virginia's attempts to address this problem have been weak at best, and VCBR feels that efforts should be made to put an end to these abuses.

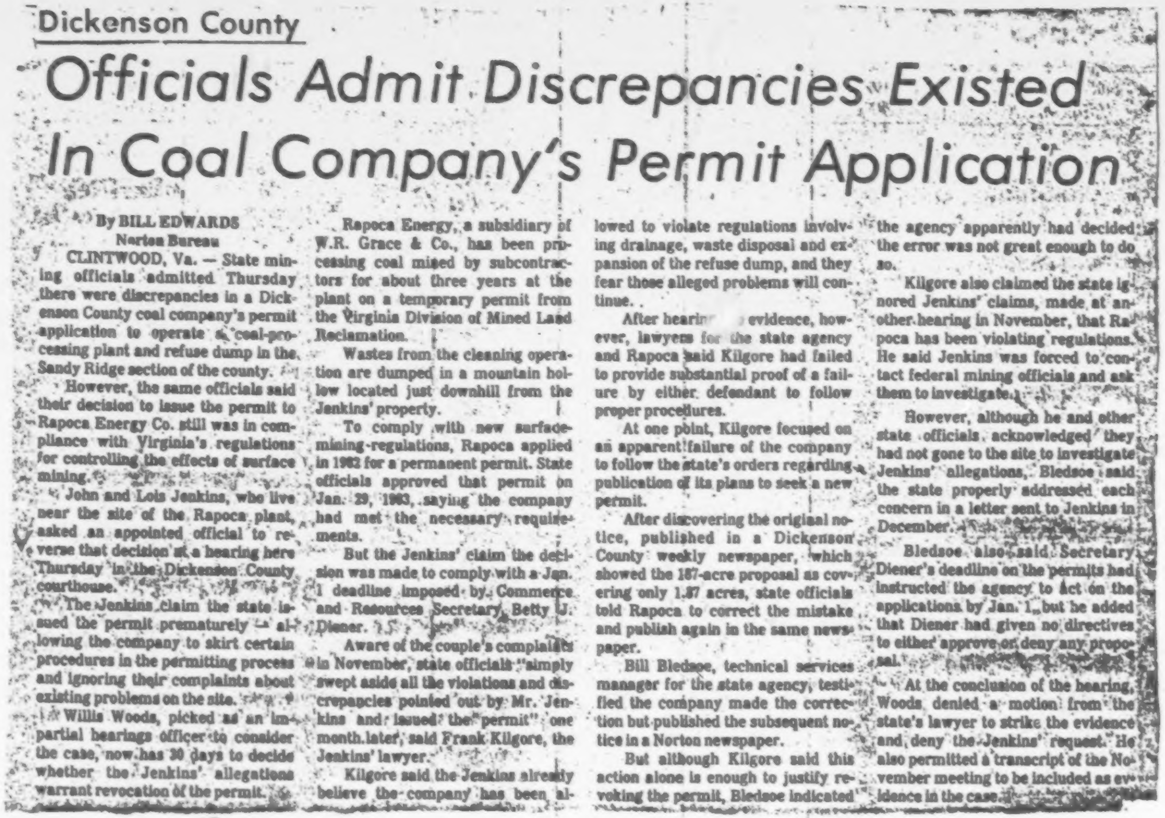
Virginia Citizens for Better Reclamation urges the OSM to take an active role to ensure that Virginia cleans up these past mining abuses.

Permit applications for companies that have outstanding violations of the Act should be denied, and remedial action schedules should be set up for proper reclamation of these sites.

All of the citizens of Southwest Virginia need OSM's assurances that these problems will be taken care of.

Bristol Herald Courier

February 24, 1984



Dickenson County

Officials Admit Discrepancies Existed In Coal Company's Permit Application

By BILL EDWARDS
Norton Bureau

CLINTWOOD, Va. — State mining officials admitted Thursday there were discrepancies in a Dickenson County coal company's permit application to operate a coal-processing plant and refuse dump in the Sandy Ridge section of the county.

However, the same officials said their decision to issue the permit to Rapoca Energy Co. still was in compliance with Virginia's regulations for controlling the effects of surface mining.

John and Lois Jenkins, who live near the site of the Rapoca plant, asked an appointed official to reverse that decision at a hearing here Thursday in the Dickenson County courthouse.

The Jenkins claim the state issued the permit prematurely — allowing the company to skirt certain procedures in the permitting process and ignoring their complaints about existing problems on the site.

Willis Woods, picked as an impartial hearings officer to consider the case, now has 30 days to decide whether the Jenkins' allegations warrant revocation of the permit.

Rapoca Energy, a subsidiary of W.R. Grace & Co., has been processing coal mined by subcontractors for about three years at the plant on a temporary permit from the Virginia Division of Mined Land Reclamation.

Wastes from the cleaning operation are dumped in a mountain hollow located just downhill from the Jenkins' property.

To comply with new surface-mining regulations, Rapoca applied in 1982 for a permanent permit. State officials approved that permit on Jan. 29, 1983, saying the company had met the necessary requirements.

But the Jenkins' claim the decision was made to comply with a Jan. 1 deadline imposed by Commerce and Resources Secretary Betty J. Diener.

Aware of the couple's complaints in November, state officials "simply swept aside all the violations and discrepancies pointed out by Mr. Jenkins and issued the permit" one month later, said Frank Kilgore, the Jenkins' lawyer.

Kilgore said the Jenkins already believe the company has been allowed to violate regulations involving drainage, waste disposal and expansion of the refuse dump, and they fear those alleged problems will continue.

After hearin [illegible] evidence, however, lawyers for the state agency and Rapoca said Kilgore had failed to provide substantial proof of a failure by either defendant to follow proper procedures.

At one point, Kilgore focused on an apparent failure of the company to follow the state's orders regarding publication of its plans to seek a new permit.

After discovering the original notice, published in a Dickenson County weekly newspaper, which showed the 187-acre proposal as covering only 1.87 acres, state officials told Rapoca to correct the mistake and publish again in the same newspaper.

Bill Bledsoe, technical services manager for the state agency, testified the company made the correction but published the subsequent notice in a Norton newspaper.

But although Kilgore said this action alone is enough to justify revoking the permit, Bledsoe indicated the agency apparently had decided the error was not great enough to do so.

Kilgore also claimed the state ignored Jenkins' claims, made at another hearing in November, that Rapoca has been violating regulations. He said Jenkins was forced to contact federal mining officials and ask them to investigate.

However, although he and other state officials acknowledged they had not gone to the site to investigate Jenkins' allegations, Bledsoe said the state properly addressed each concern in a letter sent to Jenkins in December.

Bledsoe also said Secretary Diener's deadline on the permits had instructed the agency to act on the applications by Jan. 1, but he added that Diener had given no directives to either approve or deny any proposal.

At the conclusion of the hearing, Woods denied a motion from the state's lawyer to strike the evidence and deny the Jenkins' request. He also permitted a transcript of the November meeting to be included as evidence in the case.

Bristol Herald Courier March 27, 1984

Mine Permit Issued By Rules, Judge Says

By BILL EDWARDS
Norton Bureau

Virginia mining officials complied with regulations when they issued a permit to a Dickenson County coal-processing plant in January, despite objections from a couple who live near the plant, a special judge has ruled.

Willis A. Woods, a Wytheville lawyer hired to consider the validity of such regulatory decisions, said minor discrepancies in the permit for Rapoca Energy Co. were not sufficient to overturn the agency's decision.

John and Lois Jenkins, who live adjacent to the plant site in the Sandy Ridge section of Dickenson County, challenged the permit in a hearing last month. They claim the state issued the permit prematurely, ignoring the company's alleged violation of certain surface-mining regulations, including those regulating how mine permits are issued.

Rapoca Energy, a subsidiary of W.R. Grace & Co., has been processing coal mined by subcontractors for about three years at the site under a temporary permit from the state but recently was required to get a permanent permit.

Wastes from the coal-cleaning operations are dumped in a mountain hollow just downhill from the Jenkins' property. To comply with new regulations, Rapoca applied in 1982 for a permanent permit, which the state issued to the company on Jan. 29.

During last month's hearing, the Jenkins' claimed that officials from the agency, the Virginia Division of Mined Land Reclamation, "simply swept aside all the violations and discrepancies" they previously pointed out.

According to the Jenkins' lawyer, Frank Kilgore of St. Paul, Rapoca ignored the state's order to correct and republish a notice of its permit application in the same newspaper in which it originally was published.

Kilgore said the state also reneged on its earlier decision to require the company to include a coal-haul road in its permit area.

Federal surface-mining officials have issued an order requiring the company to include the road. Rapoca and the state claim the road is a public thoroughfare and should not be part of the permit.

In his decision, however, Woods agreed with the state, saying the current status of the road appears to comply with state regulations.

Woods also said the state apparently had no authority to order Rapoca to publish its notice in a certain newspaper. He said the regulations require only that such notices be placed in papers of general circulation in the area where mine sites are located.

The Jenkins may ask the state to reconsider its decision on the permit, and they also may ask the Dickenson County Circuit Court for a ruling on the decision.

Senator WARNER. Thank you.

I have been advised by counsel and others that you have a very good reputation down here for fair and objective approach to this question.

Let me ask you some general questions here. Maybe I was a little abrasive in my characterization of this dispute going on between OSM and the industry, but I am concerned that the foreign operators are going to, Colombia being the prime example, just take all our markets and destroy our industry. That is not only the industry, but the bureaucratic structure, be it OSM, State, or otherwise who is there to support it would also be gone. No need for the bureaucratic structure if the industry itself is wiped out. A lot is at stake here.

Mr. CRANE. Right.

Senator WARNER. How would you recommend, being an objective observer of this, to try and settle some of these differences?

Mr. CRANE. I think what we have to look at here is that we have seen a hard line approach to regulations from the coal industry in Virginia in general, since the inception of the act, and environmental interests are also required to take a hard line approach, because there has been no concession coming from either side, and so what we have here are the two sides are like this [indicating]. We are not coming together on important issues that we should be coming together on.

In reference to Sandy Dysart's statement regarding Virginia not being a renegade State, I disagree with that. In many of these disputes with the OSM, Virginia is the only coal mining State that is contesting a lot of these rule changes. The AML fees fund collection program is a good example of that. The 2-acre exemption is another classic example.

Senator WARNER. That disturbs me. I have seen these 2-acre sites. I want to get into the technical thing where the OSM gets jurisdiction because of the——

Mr. CRANE. But the big thing with regard to 2 acres is the fact that we are hearing from the coal mining interests today that it is a problem of small coal operators. It is not a problem of small coal operators. It is a problem of large coal companies using the 2-acre exemption to——

Senator WARNER. Through subcontracts.

Mr. CRANE. Through subcontracting, so that they don't have to permit under the permit program. We have classic examples of that all along the line, the string of pearls example.

Senator WARNER. How would you tighten that up?

Mr. CRANE. I think the OSM has effectively done that with their 2-acre rule. We don't have any problems with the regulatory provisions of chapter 23. We have problems with the way Virginia defines what constitutes a legitimate 2-acre mine. We feel that the OSM's definition would resolve those problems by making it virtually impossible for the large coal companies to open up these 2-acre mines.

Senator WARNER. You know you can hardly say that this industry is flourishing down here and everybody is getting rich.

Mr. CRANE. That is entirely true, but I don't think Virginia is the only State that is hurting right now. Most of the States in this part of the country are hurting. Virginia has——

Senator **Warner**. What can we do to help? We are really talking about people's lives and jobs and the like.

Mr. **Crane**. I think again, we just need some more cooperation between all the communities involved here, the coal industry, the environmental interests and the regulatory agencies. I think that these groups need to start coming together and looking at these issues for the common interests as opposed to just taking a hard line approach across the board on everything, because what we are dealing with here, if we win, we win big, but if we lose, we lose big. We should be really taking a more moderate approach to a lot of these issues.

Senator **Warner**. That is all sides.

Mr. **Crane**. That is all sides.

Senator **Warner**. Including yourself.

Mr. **Crane**. Including myself.

Senator **Warner**. That is fair. You know, speaking of the Federal court, I practiced law for many years. You will get a solution eventually if you have a lot of time, patience and money to wait. You can solve it. In the meantime, as you say. through a more moderate approach by your segment of interest, the industry, the bureaucratic structure, we may be able to solve it. What sort of formula would you suggest to obtain that reconciliation and moderation?

Mr. **Crane**. It is a hard question to address, because I don't think any side is willing to move without seeing that the other side is also willing to move. We certainly can't do that. If we make a move on any of these issues right now, without seeing the other side move toward a more moderate position, that shows us that we are giving in to them. It is a sign of weakness. We can't afford to do that. I am not sure where the first step begins, and I think it is something that has to begin real soon.

Senator **Warner**. I am impressed by your conciliatory and pragmatic approach to this.

Mr. **Crane**. Thank you.

Senator **Warner**. Maybe I will call on you again.

Mr. **Crane**. I would be pleased to do that.

Senator **Warner**. What I am worried about, I repeat, is that we can sit here sparring for a few more years. Unless this industry is healthy and strong, it won't be able to compete with that foreign introduction of coal.

Excuse me. My colleague here, for those who may not understand, although I am chairman, I wish one of my colleagues from the Democratic side were available today, but we are ably represented on the Democratic side by Ms. Mason.

Go right ahead.

Ms. **Mason**. Thank you.

Senator **Warner**. Don't you have any questions?

Ms. **Mason**. I think you fairly addressed everything.

Senator **Warner**. Thank you.

All right moving right along. We will now go to the next item on the agenda. We will have the Mining and Reclamation Council of America panel, Mr. Dan R. Gerkin, president of the Mining and Reclamation Council of America and Mr. Jeffrey Jarrett, general manager of Cravat Coal Co. of Grayson, KY, Mr. Alfred W. Whitehouse, environmental engineer, Buffalo Coal Co., Bayard, WV. Did I get that right?

Mr. WHITEHOUSE. Bayard.

Senator WARNER. In Fauquier County we call it Bayard.

Mr. Paul Goad, Jr., senior vice-president of operations, Ashland Coal Co., Huntington, WV. You are welcome, gentlemen.

You gentlemen from West Virginia, are you part of the secessionist group?

VOICE. No.

STATEMENT OF DANIEL R. GERKIN, PRESIDENT, MINING AND RECLAMATION COUNCIL OF AMERICA

Mr. GERKIN. Mr. Chairman, I am Dan Gerkin. I am president of the Mining and Reclamation Council of America. We are a national organization which represents over 250 companies and 31 States and regional coal associations in Washington.

With me today are three gentlemen who serve on our technical committee and bring with them today extensive expertise and field experience with the implementation of the Federal surface mining law and regulatory program. They will make some specific detailed recommendations regarding the program following my brief remarks.

As you know, we are now about the seventh anniversary of the passage of this law. The past 7 years have been difficult, challenging in years of progress, I think for everybody in this program.

Any evaluation of this program at this point has to recognize that in 7 years we have really had two different programs: the first one under the Carter administration and now the current program.

Simply stated, it is our opinion that the program under the Carter administration was a disaster and a failure from all aspects. We had a situation where we had Federal bureaucrats in Washington with no experience writing voluminous volumes of regulations that were not cost effective, and in a lot of cases not environmentally sound. That administration ignored input from the industry and from State agencies. There was a punitive approach adopted toward enforcement. They did not trust the States and as a result we had a program developed that was not workable, unrealistic and one-sided. And as I said, that OSM decided to ignore the concepts of State primacy that was written into the law. Fortunately, this heavy handed approach to this regulatory problem changed again in 1981 with the Reagan administration. They were going to listen to all sides and all interested parties. They quickly eliminated the "us against them" mentality toward enforcement, and developed a cooperative approach and worked aggressively toward achieving State primary.

Central to their success I think has been their effort at regulatory reform. They took the very comprehensive standards from the act, used them as a base and began to develop regulations that eliminated the cookbook approach. We got, we are getting away from specific designed criteria at the Federal level in developing a program that depends on flexibility, innovation within the industry, and the State agencies, in order to get compliance that is environmentally sound and cost effective, and I think finally after 7 years we are nearing a point where we have this program to the point where it can be productive.

None of my remarks, Mr. Chairman, should be construed as a full endorsement of the current program. We continue to have significant problems with some of the regulations and certainly with important provisions of the statute. However, as I mentioned, I think the important word here at this point is progress. When you consider where we were 7 years ago, when you consider particularly where this program was 3 years ago, I think remarkable progress has been made in terms of putting an effective enforcement regulatory program into operation. Some indication of that progress and success I think was indicated last June.

Congressmen Udall and Sieberling who, of course, were authors of the act, visited some sites in Pennsylvania and West Virginia. They were very impressed with what they saw and said so publicly. If we can please Congressman Udall after 7 years of this program, I think we must be making some progress.

I would encourage you, Senator, I know you were going to take a look personally at some mine sites yesterday and were weathered out. I would encourage the energy committee and members and staff to try to put together a tour this summer, if possible. If not this summer, certainly in 1985.

Senator WARNER. I intend to go back and repeat that trip I missed yesterday.

Mr. GERKIN. I think it is important to see the progres made in the last 7 years.

One thing I would like to cover, I would like to bring to your attention a new issue. There i a report coming from the General Accounting Office that will probably recommend an end to OSM's grant program that provides financial support for the administration of State programs. GAO is of the opinion that OSM should be recoupng 100 percent of its cost from all regulatory activities. They are expected to recommend that Congress phase out this administrative grant porgram over 5, I believe a 5-year period, and they would replace those grants through increased State-assessed permit fees on coal operators, of course.

What would this mean to the coal industry? OSM's 1985 fiscal year budget contains about $108 million for the State program grants and regulatory activities. So by utilizing GAO's calculations, we have estimated that would be an additioal average assessment of approximately 14 cents a ton on every ton of coal mined in this country.

This would be in addition to the already exisitng State permit fees. This would be in addition to the State 35 cents per ton for AML, in addition to 50 cents per ton black lung tax that is already in place. In addition to the State severance tax, in addition to all exisiting business taxes that every coal company is already paying. It is a significant amount of money. A 100,000-ton-a-year coal operator would be paying $14.000 extra a year out of his pocket. A million-ton operator being $140,000 additional tax, all for the privilege of paying for their own regulatory program.. This is totally unacceptable to us, Mr. Chairman. We are certain, fairly certain, that GAO is going to make this recommendation. We would encourage you and other members of the committee to actively work against the elimination of these State grant programs.

Finally, I would just recommend or just say that I think after 7 years we are rapidly approaching the time when we can take a serious look legislatively at this statute. There have been no amendments in 7 years. I think we are at a point where the industry can come forward with some productive and justifiable changes. We would hope to have your interest and support in that effort as early as 1985.

[The prepared statement of Mr. Gerkin follows:]

STATEMENT
OF
DANIEL R. GERKIN
PRESIDENT
MINING AND RECLAMATION COUNCIL OF AMERICA
WASHINGTON, D.C.

REPRESENTING
THE
MINING AND RECLAMATION COUNCIL OF AMERICA

BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RICHLANDS, VIRGINIA
APRIL 18, 1984

MR. CHAIRMAN, MY NAME IS DAN GERKIN. I AM PRESIDENT OF THE MINING AND RECLAMATION COUNCIL OF AMERICA (MARC). MARC IS A NATIONAL ORGANIZATION IN WASHINGTON, D.C., WHICH REPRESENTS OVER 250 COMPANIES AND 31 STATE AND REGIONAL COAL ASSOCIATIONS. OUR PRODUCING MEMBERS MINED APPROXIMATELY 60% OF THE NATION'S TOTAL OUTPUT IN 1983. WITH ME TODAY ARE AL WHITEHOUSE OF BUFFALO COAL COMPANY, WITH OPERATIONS IN WEST VIRGINIA AND MARYLAND, JEFF JARRETT OF CRAVAT COAL COMPANY, WITH MINES IN KENTUCKY AND OHIO, AND PAUL GOAD OF ASHLAND COAL COMPANY, WITH OPERATIONS IN KENTUCKY AND WEST VIRGINIA. THESE GENTLEMEN SERVE ON MARC'S TECHNICAL COMMITTEE AND BRING WITH THEM TODAY EXTENSIVE EXPERTISE AND DIRECT FIELD EXPERIENCE WITH THE IMPLEMENTATION OF THE FEDERAL SURFACE MINING LAW AND REGULATORY PROGRAM. WE APPRECIATE THE OPPORTUNITY TO APPEAR TODAY TO EXPRESS OUR VIEWS ON THE CURRENT STATUS OF THE FEDERAL REGULATORY PROGRAM, PARTICULARLY AS IT RELATES TO APPALACHIAN OPERATIONS.

THIS SUMMER MARKS THE SEVENTH ANNIVERSARY OF P.L. 95-87. THE PAST SEVEN YEARS HAVE BEEN FILLED WITH CHALLENGE, DIFFICULTY, AND PROGRESS FOR EVERYONE INVOLVED. INCLUDING THE INDUSTRY, STATES AND OSM. ANY EVALUATION OF THE FEDERAL SURFACE MINING PROGRAM MUST RECOGNIZE THAT WE'VE REALLY HAD TWO CLEARLY DIFFERENT PROGRAMS IN SEVEN YEARS: ONE UNDER THE CARTER ADMINISTRATION AND A SECOND UNDER THE REAGAN ADMINISTRATION.

SIMPLY STATED, THE PROGRAM UNDER THE CARTER ADMINISTRATION WAS A DISASTER AND A FAILURE. FEDERAL BUREAUCRATS, WITH VIRTUALLY NO ACTUAL EXPERIENCE OR KNOWLEDGE OF THE COAL INDUSTRY, ENACTED VOLUMES OF RULES THAT GENERALLY MANDATED THE MOST BURDENSOME AND COSTLY APPROACH TO COMPLIANCE. THEY TOTALLY IGNORED RECOMMENDA-

TIONS FROM THE INDUSTRY AND STATES, THUS LOSING THEIR ONLY SOURCE OF REAL HANDS-ON MINING, RECLAMATION AND REGULATORY EXPERTISE. THEY ADOPTED A PUNITIVE APPROACH TOWARDS ENFORCEMENT AND COMPLIANCE WITH INDUSTRY AND AN ATTITUDE OF MISTRUST TOWARDS THE STATES. THE RESULT WAS THE ESTABLISHMENT OF A ONE-SIDED, UNREALISTIC AND TOTALLY UNWORKABLE FEDERAL REGULATORY PROGRAM. BY 1980, IT WAS CLEAR THAT OSM HAD CHOSEN TO IGNORE THE "STATE LEAD" CONCEPT THAT WAS A CORNERSTONE OF THE ACT.

FORTUNATELY, THIS HEAVY-HANDED APPROACH BEGAN TO CHANGE UNDER THE REAGAN ADMINISTRATION IN EARLY 1981. THE NEW OSM QUICKLY RECOGNIZED THE IMPORTANCE OF UTILIZING INPUT FROM ALL INTERESTED PARTIES -- INCLUDING COAL PRODUCERS AND STATE AGENCIES. THEY WORKED TO ELIMINATE THE "US AGAINST THEM" ENFORCEMENT MENTALITY IN FAVOR OF A MORE COOPERATIVE APPROACH AND MOVED AGGRESSIVELY TOWARDS THE CONGRESSIONALLY MANDATED CONCEPT OF STATE PRIMACY.

CENTRAL TO THIS ADMINISTRATION'S SUCCESS HAS BEEN ITS EFFORTS AT REGULATORY REFORM. UTILIZING THE VERY COMPREHENSIVE PERFORMANCE STANDARDS OF THE ACT AS A BASE, OSM HAS MADE SIGNIFICANT PROGRESS IN ELIMINATING THE COSTLY AND BURDENSOME COOKBOOK APPROACH TO REGULATORY COMPLIANCE. IN MOST INSTANCES, FEDERALLY DICTATED DESIGN CRITERIA HAVE BEEN DROPPED IN FAVOR OF A POLICY THAT ENCOURAGES FLEXIBILITY AND INNOVATION IN THE FIELD THAT RESULTS IN FULL COMPLIANCE THAT IS BOTH ENVIRONMENTALLY SOUND, AS WELL AS COST EFFECTIVE. WE SEEM FINALLY TO BE ON THE VERGE OF THE TYPE OF SURFACE MINING PROGRAM WE ENVISIONED FROM THE BEGINNING. A PROGRAM WHERE CONGRESS SETS THE MINIMUM ENVIRONMENTAL PERFORMANCE STANDARDS AND OSM APPROVES STATE PROGRAMS THAT MEET THOSE FEDERAL STANDARDS. A PROGRAM THAT ALLOWS STATES AND OPERATORS THE FLEX-

IBILITY TO DECIDE THE MOST EFFECTIVE AND LEAST COSTLY MEANS OF COMPLIANCE AND A CONTINUING OVERSIGHT ROLE THAT GIVES OSM A FIRM HAND IN MONITORING STATE PROGRAM COMPLIANCE.

MR. CHAIRMAN, NONE OF THIS SHOULD BE CONSTRUED AS A FULL ENDORSEMENT OF THE CURRENT REGULATIONS OR THE STATUTE. WE CONTINUE TO HAVE SIGNIFICANT PROBLEMS WITH SOME OF THE RULES AS WELL AS IMPORTANT PROVISIONS OF THE LAW, SOME OF WHICH WILL BE COVERED BY OUR OTHER WITNESSES. HOWEVER, AS I MENTIONED EARLIER, THE KEY WORD AT THIS STAGE IS "PROGRESS." WHEN YOU CONSIDER WHERE SOME OF THE STATE ENFORCEMENT PROGRAMS WERE JUST SEVEN YEARS AGO AND WHEN YOU CONSIDER WHERE THE FEDERAL PROGRAM WAS JUST THREE YEARS AGO, I THINK THAT REMARKABLE PROGRESS HAS BEEN ACHIEVED IN TERMS ESTABLISHING AN EFFECTIVE, NATIONWIDE MINE RECLAMATION PROGRAM IN A RELATIVELY SHORT PERIOD OF TIME.

SOME INDICATION OF THAT PROGRESS AND THE SUCCESS OF THE PROGRAM MAY HAVE BEEN IN EVIDENCE LAST JUNE WHEN CONGRESSMEN MO UDALL (D-AZ) AND JOHN SIEBERLING (D-OH), AUTHORS OF THE FEDERAL SURFACE MINING LAW AND VOCAL CRITICS OF THE SURFACE MINING INDUSTRY, TOURED SEVERAL MINE SITES IN PENNSYLVANIA AND WEST VIRGINIA. BOTH GENTLEMEN SEEMED GENUINELY IMPRESSED WITH WHAT THEY SAW AND SAID SO PUBLICALLY.

WHEN IT COMES TO ENFORCEMENT PROGRAMS AND MEASURING THE SUCCESS OF TODAY'S MODERN RECLAMATION TECHNOLOGY, NOTHING CAN COMPARE WITH AN ON-SITE VISIT. MR. CHAIRMAN, I WOULD ENCOURAGE THE SENATE ENERGY COMMITTEE MEMBERS AND STAFF TO PLAN A SIMILAR TOUR OF MINE SITES AT ITS EARLIEST CONVENIENCE IN ORDER TO WITNESS FIRST HAND THE PROGRESS THAT'S BEEN MADE IN THE LAST SEVEN YEARS. IF IT'S NOT POSSIBLE THIS YEAR, I WOULD ENCOURAGE A CONGRESSIONAL TOUR IN 1985.

I'D LIKE TO BRING ANOTHER ISSUE OF CONCERN TO YOUR ATTENTION BEFORE I CLOSE. WE'D LIKE TO ALERT YOU TO A REPORT THAT IS DUE SOON FROM THE GENERAL ACCOUNTING OFFICE (GAO) THAT MAY RECOMMEND AN END TO OSM'S GRANTS PROGRAM THAT PROVIDES FINANCIAL SUPPORT FOR THE ADMINISTRATION OF STATE PROGRAMS. GAO IS OF THE OPINION THAT OSM SHOULD BE RECOUPING 100% OF ITS COSTS FOR ALL REGULATORY ACTIVITIES. THEY ARE EXPECTED TO RECOMMEND THAT CONGRESS PHASE OUT THE ADMINISTRATIVE GRANT PROGRAM OVER A FIVE YEAR PERIOD, REPLACING THE GRANTS THROUGH INCREASED STATE-ASSESSED PERMIT FEES ON COAL OPERATORS.

WHAT WOULD THIS MEAN TO THE COAL INDUSTRY? OSM'S FY 85 BUDGET CONTAINS $39.1 MILLION FOR STATE PROGRAM GRANTS. THE BUDGET ALSO SHOWS $69.6 MILLION FOR REGULATION AND TECHNOLOGY. THAT'S A TOTAL $108.7 MILLION COST FOR REGULATING THE SURFACE COAL MINING INDUSTRY IN 1985. UNDER THE GAO RECOMMENDATION THIS MONEY WOULD BE RAISED BY DRAMATICALLY INCREASING PERMIT FEES. OUR ESTIMATES, BASED ON GAO CALCULATIONS AND PROJECTED 1983 COAL PRODUCTION OF 784 MILLION TONS, REVEAL AN AVERAGE ADDITIONAL ASSESSMENT OF APPROXIMATELY $.14 PER TON ABOVE EXISTING STATE PERMIT FEES. THESE FEES WOULD BE IN ADDITION TO AND UNRELATED TO THE EXISTING ABANDONED MINED LAND TAX OF $.35 PER TON.

THIS WOULD RESULT IN WHAT AMOUNTS TO AN ADDITIONAL TAX ASSESSMENT OF $14,000 PER YEAR FOR A SMALL OPERATOR MINING 100,000 TONS ANNUALLY... A ONE MILLION TON PER YEAR PRODUCER WOULD PAY AN ADDITIONAL $140,000, ALL FOR THE PRIVILEGE OF BEING REGULATED. MR. CHAIRMAN, THIS PROPOSAL IS TOTALLY UNACCEPTABLE TO THE COAL INDUSTRY. IN PASSING P.L. 95-87 CONGRESS FOUND THAT FEDERAL REGULATION OF THE SURFACE COAL MINING INDUSTRY WAS IN THE PUBLIC IN-

TEREST. RECOGNIZING THIS, SECTION 705(A) OF THE ACT CLEARLY AUTHORIZES FEDERAL GRANTS FOR THE PURPOSE OF DEVELOPING, ADMINISTERING AND ENFORCING STATE PROGRAMS.

THE COST WOULD ULTIMATELY BE PAID BY AMERICAN CONSUMERS THROUGH HIGHER UTILITY BILLS. OF COURSE, SMALL OPERATORS, UNABLE TO TAKE ADVANTAGE OF PASS THROUGHS IN LONG-TERM CONTRACTS WOULD HAVE TO ABSORB THE COSTS, LIKELY FORCING MANY OF THEM OUT OF BUSINESS. MR. CHAIRMAN, WE URGE AND THE OTHER MEMBERS OF THE ENERGY COMMITTEE TO VIGOROUSLY OPPOSE ANY ATTEMPT TO ELIMINATE OR REDUCE OSM'S ADMINISTRATIVE GRANT PROGRAM AND COMMUNICATE YOUR CONCERNS TO THE GAO.

MR. CHAIRMAN, YOU ARE WELL AWARE THAT THE CURRENT PROBLEMS OF THE COAL INDUSTRY EXTEND BEYOND THE REQUIREMENTS OF P.L. 95-87. OUR CAPACITY TO PRODUCE COAL STILL SIGNIFICANTLY SURPASSES OUR ABILITY TO SELL IT AT A FAIR PRICE, DUE ~~IN~~ LARGE PART TO THE LINGERING EFFECTS OF THE RECESSION, THE DROP IN WORLD OIL PRICES AND CONTINUING UNCERTAINTY OVER PROPOSED ACID RAIN LEGISLATION. IN ADDITION, ADMINISTRATIVE RAIL DEREGULATION BY THE INTERSTATE COMMERCE COMMISSION (ICC) IS FURTHER SQUEEZING PRODUCERS AGAINST THE FLAT MARKET. NOT SURPRISINGLY, SMALLER PRODUCERS ARE SQUEEZED THE HARDEST. CURRENTLY, OUR ONLY MEANS OF MAINTAINING ANY MARGIN OF PROFITABILITY IS BY BECOMING MORE COST EFFICIENT. THEREFORE, THE SPECIFIC SUGGESTIONS OUR PANEL MAKES TO YOUR SUBCOMMITTEE TODAY ARE AIMED AT REDUCING SURFACE MINING COSTS, WHILE MAINTAINING THE ENVIRONMENTAL INTEGRITY OF THE STANDARDS. WE URGE YOUR CONSIDERATION OF THESE RECOMMENDATIONS, BUT ALSO POINT OUT THAT WE BELIEVE THE TIME FOR A SERIOUS LEGISLATIVE REVIEW OF SMCRA IS RAPIDLY APPROACHING. MUCH OF THE RELIEF WE NEED SIMPLY CANNOT BE ACHIEVED WITHOUT STATUTORY MODIFICATIONS. WE HOPE TO HAVE YOUR

INTEREST AND SUPPORT OF JUSTIFIABLE AND PRODUCTIVE CHANGES TO THE ACT, PERHAPS AS EARLY AS 1985.

THANK YOU AGAIN FOR YOUR INTEREST. I WILL NOW TURN TO AL WHITEHOUSE, WHO WILL DISCUSS SEVERAL SPECIFIC DETAILED RECOMMENDATIONS WITH YOU.

Senator WARNER. I will be deeply involved in it, subject to a small matter in November, which I am taking very seriously by the way. I don't mean to make light of it.

Do you feel that this act has benefited industry, environment and so forth? You seem to take a rather constructive approach to this situation.

Mr. GERKIN. I think we look——

Senator WARNER. We have heard testimony to the contrary this morning. I am not being disparaging of any witness' testimony. I am just trying to get a better understanding of the various viewpoints and the disparity between the viewpoints.

Mr. GERKIN. We looked at the passage of this law with some amount of inevitability. I think there were strong arguments that can be made that this program could have gone forward, the regulation of the industry, without passage of a Federal law, but given the bent of the Congress and the movement toward environmental conditions——

Senator WARNER. That is history now. The law is on the books. The question before the Congress is at what time to reopen this law and examine portions of it to again try and strike this balance between the environmental concerns and industrial concerns. But you think there have been benefits that have flowed from this act to both the environment and industry?

Mr. GERKIN. Certainly not to the coal industry. I couldn't find any benefits to the coal industry. We are learning to comply and do our thing, so to speak, under the law.

Senator WARNER. But I gain the impression it is a very combative relationship between OSM and the coal industry. You have tempered your remarks, however. I don't judge from your views that it is quite as serious as perhaps others who have testified today.

Mr. GERKIN. Well, we are again looking at kind of reality that the program is there; we are doing our best and I think most people are.

Senator WARNER. To make it work?

Mr. GERKIN. To make it work. You know the pendulum has swung way out of proportion in our view.

Senator WARNER. In which direction?

Mr. GERKIN. To the left.

Senator WARNER. Let's get more precise. [Laughter.] That is the favorite term in the political world. Let's keep those terms and you try and use others. I used the balance, the scales as opposed to the pendulum. You mean the environmental concerns are benefiting more from the act than the industry?

Mr. GERKIN. Well, I am not sure those are the words I would use.

Senator WARNER. I am not trying to suggest. You go ahead. You testify the way you wish.

Mr. GERKIN. I think the law, the statute—there is not a balance in our view with the statute right now. The pendulum has swung too far from our standpoint and we are very interested in going back after 7 years, looking at the law, looking where there are unnecessary regulatory programs, things that have caused coal operators' and consumers' money that do nothing to enhance the environmental performance of the program. There are a lot of those type of things in this law as there would be in any major environmental program. It is a process of hammering things out. And so far the Congress, Chairman Udall specifically has been unwilling to take a look at the law. It has been 7 years. That is a long time for a major program like this to go unamended and that is what we want to see.

Senator **Warner**. Believe me, I am trying to conduct this, and I respect your remarks, in a forum and atmosphere that is totally nonpolitical. While I recognize some of the problems and what has been taking place, I do want to try and get to what I perceive the danger is that has been raised by a witness up here about the Colombian coal. You are familiar with that situation.

Mr. **Gerkin**. I certainly am.

Senator **Warner**. Did I overexaggerate the threat of that coal?

Mr. **Gerkin**. Absolutely not.

Senator **Warner**. Unless we get our house in order between the legislators, the miners, producers and the industry, we will not be in a competitive situation when that mainstream of coal begins to flow in here in what, 3 years?

Mr. **Gerkin**. Very soon. We are already not in a competitive situation between the cost of environment regulations, labor costs, and transportation costs that you are aware of.

Senator **Warner**. I was trying to keep the railroad out of this. From my research, Colombia doesn't have any surface mining law, does it?

Mr. **Gerkin**. I am sure they don't, Senator.

Senator **Warner**. I am not suggesting that we should abolish the law. I am pointing out that what our industry is dealing with here in striking this balance between the environment and the industry, we have got to—there was dramatic testimony by the preceding witness that said we have all got to give a little bit and reconcile our differences and strengthen this industry so it is in a competitive position.

Thank you.

Mr. **Gerkin**. Thank you.

Senator **Warner**. We will next hear from Mr. Jarrett.

Mr. **Gerkin**. Mr. Whitehouse will be next.

Mr. **Whitehouse**. I am Alfred Whitehouse, Mr. Chairman, and I am extremely pleased to come here.

Senator **Warner**. Excuse me. My associate counsel has a question.

Ms. **Mason**. I have one question. Do you know when GAO intends to circulate the report?

Mr. **Gerkin**. We are expecting June, I think. We are very concerned about that report.

Senator **Warner**. Go ahead.

STATEMENT OF ALFRED E. WHITEHOUSE, ENVIRONMENTAL ENGINEER, BUFFALO COAL CO., BAYARD, WV

Mr. **Whitehouse**. My company is the Buffalo Coal Co. We operate our mines in western Maryland and West Virginia.

Today I have five issues that I wish to discuss. Some have been mentioned before and some may provide insight as to solutions for you. The first is the plight of the small coal operator. Since the enactment of the Surface Mining Act, greater than 60 percent of those are no longer in business. It is a combination certainly of regulatory costs and a slumping market type with that. The act provided surface mine operators assistant programs for small operators. The level of production was defined as 100,000 tons. In today's market it is an unrealistic number. In order to survive today, the 100,000-ton operator is really a man of the past. The small operator is now toward 200,000 to 250,000 tons. This poor man is still struggling, as the type of person who was exemplified by the testimony of the Virginia operators, and he is the kind of person who still needs that break, a little assistance and a little wherewithal.

The second issue is one which is of extreme concern to me, and it is an issue of remining. The AML fund will never complete the reclamation of the abandoned lands that are in existence today. There is over, in excess of a million abandoned mined land acres, the most of which are in Appalachia, VA, included.

Presently under the abandoned mined lands, about 40 percent to 45 percent have very recoverable and economically recoverable reserves. These are in areas that are already affected. These are areas where the small operator is already in place, his capital investment is made. But in order for him to remine these areas, he is burdened with the additional task of treating any effluent which does not meet the pH and metal standards prescribed by the EPA.

My company has reserves, which 60 percent approximately were remaining of some type or another, either abandoned deep mines or second or third cuts on surface mines. So it is of critical importance to us. A recommendation certainly would be that the committee urge the OSM and the EPA to jointly work an arrangement whereby these existing discharges are not considered a new source under the NPDES Program and a policy of nondegradation be considered rather than one of permanent liability. This fear of permanent liability for treatment acts as a very strong disincentive, and many of the areas that could be cleaned up aren't being cleaned up simply due to that fear.

Another concern is that it actually acts as a double standard. Under the AML program, if a contractor were to be given a contract to reclaim a mine site with a preexisting discharge, he is not assessed permanent liability in the event that that dicharge is not abated and reclamation not up to the perfect standard, but if an operator, who will do this at no expense to the taxpayer, wishes to go in and remine and reclaim, he has that burden of guaranteeing that this discharge will be abated and it is a critical issue in light of the abandoned mine lands problems and funding difficulties.

We can go a lot farther faster if the industry is allowed this option.

Another area of concern, experimental practices in research. Certainly we would like to congratulate OSM on their using this approach. We would like to urge that more of these kind of things be done. The old design standards of the past have given way and it is based on practice in the field. Oftentimes laboratory studies don't measure up. You need field demonstrations. There needs to be the opportunity to try new things, and there needs to be the flexibility granted under this program, and, quite frankly, we would appreciate a more flexible role there in assessing liability at this point. In certain experimental practice, if you would fail, then you are liable, of course, to go right back and do it under the old standards that exist. This has been a disincentive to the industry to try very many experimental practices, and I think that is well witnessed by the very few that have been approved by OSM.

Another area of great concern, section 522, lands unsuitable and the unsuitability portion of the act. There have been many frivolous petitions filed, especially in Pennsylvania and Maryland, and there have been costly delays, lengthy hearings. Ultimately the mining permits have been granted, and we appreciate OSM's efforts in trying to tighten up those things which have allowed frivolous petitions. There is some concern, however, that these are under litigation and that these new, this new program has not been implemented, and if for any reason that these would be overturned in the courts, we would certainly urge your committee to try to embody those ideas that are in the current regulations into statutory changes. It is a real risk to us.

Another concern is valid existing rights. OSM has taken the position that for valid existing rights there needs to be a taking under the constitution. We feel that the Congress intended that mining really should be permitted so long as there were some valid existing rights. Our problem is with that definition. We feel that if a coal company, for example, owned the coal property, that suddenly that should be an indication that they intended to mine it and that it would be considered as a valid existing right. The States had a suite of laws that define ownership in VER, and we would urge OSM to turn to the States to define that.

The last concern is one of buffer zones. I think it one of inflexibility rather than a problem with the fact that certain things should be buffered. There have been arbitrary limits set under 52, for example, churhes and cemeteries and public buildings. There are no waiver positions or provisions in the act or the regulations, and if a small congregation or a small group wish to have the revenues generated by coal, they are precluded from doing so based on these——

Senator WARNER. I want to trace back that buffer—where is that buffer provision? Can anybody tell me?

Mr. WHITEHOUSE. 522.

Senator WARNER. 522. I just want to quickly read it here.

Anything in addition that you want to add? I interrupted.

Mr. WHITEHOUSE. Only that some flexibility be allowed for these owners of mineral resources, to have the option to realize the benefits from their reserves and not have an arbitrary predetermined zone established. The same applies to streams. There is certainly no justification to believe that mining can't occur closer than 100 feet of a stream, and especially on a stream that would divide a mine site, you have 200 feet of a stream. It is a costly omission and sometimes causes a mine site to be divided in half, and actually you create two mine sites instead of one. It is again this inflexibility to allow the regulatory authority the option to approve or deny based on the merits of the individual case.

We would urge that a change be made there to allow that flexibility based on a reasoned approach.

[The statement of Mr. Whitehouse follows:]

STATEMENT
OF
ALFRED E. WHITEHOUSE

ENVIRONMENTAL ENGINEER
BUFFALO COAL COMPANY
BAYARD, WEST VIRGINIA

REPRESENTING
THE
MINING AND RECLAMATION COUNCIL OF AMERICA

BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RICHLANDS, VIRGINIA
APRIL 18, 1984

MR. CHAIRMAN, MY NAME IS ALFRED WHITEHOUSE, I AM THE ENVIRONMENTAL ENGINEER FOR BUFFALO COAL COMPANY IN BAYARD, WEST VIRGINIA. OUR COMPANY OPERATES MINES IN WESTERN MARYLAND AND WEST VIRGINIA. AS A SMALL OPERATING CONCERN IN APPALACHIA, I APPRECIATE THIS IMPORTANT OPPORTUNITY TO PRESENT ISSUES OF NEW AND CONTINUING CONCERN TO BUFFALO COAL AND ITS NEIGHBORING SMALL COAL OPERATORS.

SMALL OPERATORS

SINCE ITS INCEPTION MARC HAS ALWAYS SOUGHT TO ENHANCE THE WORKABILITY AND GOALS OF THE SURFACE MINING CONTROL AND RECLAMATION ACT THROUGH ITS CONSTANT COMMUNICATION WITH OSM AND THE CONGRESS. THE PRODUCTION AND USE OF COAL IN A TECHNICALLY EFFICIENT AND ENVIRONMENTALLY SOUND MANNER IS INDEED IN THE BEST INTEREST OF EVERY CITIZEN AND OF MOST PLANT AND ANIMAL SPECIES THROUGHOUT THE NATION. AMONG THE MANY ENVIRONMENTAL STATUTES THE COAL INDUSTRY ADHERES TO IS THE ENDANGERED SPECIES ACT; AND WHILE WE AGREE WITH THE MERITS OF PROTECTING THESE SPECIES FROM BECOMING VICTIMS OF MANKIND, WE FEEL COMPELLED TO SUGGEST AN ADDITION TO THE LIST OF ENDANGERED SPECIES -- THE SMALL COAL OPERATOR. THE FACT IS THAT THE IMPACTS OF THE SURFACE MINING ACT AND THE REGULATORY PROGRAM HAVE BEEN DEVASTATING TO THESE SMALL BUSINESSMEN. WHILE WE DO NOT BELIEVE THAT IT WAS THE INTENTION OF CONGRESS TO ENACT A PROGRAM THAT WOULD RESTRUCTURE THE HISTORICALLY HIGHLY COMPETITIVE COAL INDUSTRY INTO AN OLIGOPOLY, THIS APPEARS TO BE OCCURRING. IF NOTHING IS DONE TO REVERSE THE PRESENT TREND INITIATED BY THE ACT, SMALL COAL OPERATORS WILL FAST BECOME EXTINCT. WE CANNOT LOSE SIGHT OF THE FACT THAT IT WAS THE SMALL BUSINESSMAN WHO LAID THE FOUNDATION AND FORMED THE BACKBONE OF AMERICAN SOCIAL AND ECONOMIC INSTITUTIONS. OUR NATION CAN HARDLY AFFORD TO LOSE THIS HISTORICALLY IMPORTANT INDUSTRIAL SECTOR, ESPECIALLY IN THE SLUMPING COAL INDUSTRY. THE RAMIFICATIONS WOULD BE RAVAGING.

RECENT ENERGY DEPARTMENT STATISTICS INDICATE THAT BETWEEN 1977 AND 1982 THE PERCENT OF NATIONAL COAL PRODUCTION FROM SURFACE MINES PRODUCING LESS THAN 100,000 TONS PER YEAR, THAT IS, SMALL OPERATORS, HAS DECLINED BY AN ALARMING FIGURE OF OVER 60 PERCENT. THIS FIGURE IS EVEN MORE DISTURBING WHEN CONSIDERED IN LIGHT OF THE FACT THAT COAL PRODUCTION NATIONWIDE WAS INCREASING 19.7 PERCENT OVER THE SAME PERIOD. ACCORDING TO MSHA STATISTICS, IN 1977 THERE WERE OVER 2918 SURFACE COAL MINES PRODUCING LESS THAN 100,000 TONS PER YEAR. BY 1981 THIS FIGURE HAD DECREASED TO 1398 MINES.

SMALL PRODUCERS ARE THE FORCE WHICH MAINTAINS A COMPETITIVE MARKET, KEEPING COAL ECONOMICALLY PREFERABLE TO OTHER ENERGY SOURCES CONSISTENT WITH U.S. ENERGY SELF DEPENDENCY GOALS. THE CURRENT COSTS ASSOCIATED WITH THE FEDERAL PROGRAM HAVE DRASTICALLY INCREASED THE ECONOMIES OF SCALE NECESSARY TO OPERATE IN THE COAL INDUSTRY AND WILL CONTINUE TO EXTRACT A PARTICULARLY HEAVY TOLL ON SMALL PRODUCERS IF CONGRESS AND THOSE CONCERNED WITH THE LONG RANGE VIABILITY OF THE COAL INDUSTRY DO NOT JOIN US IN WORKING TO REVERSE THESE TRENDS.

ONE WAY TO ADDRESS THIS PROBLEM IS FOR CONGRESS TO REDEFINE THE SMALL OPERATOR UNDER THE SMALL OPERATOR ASSISTANCE PROGRAM (SOAP) TO REFLECT MORE ACCURATELY THE TRUE PROFILE OF TODAY'S SMALL OPERATORS. IN ITS PRESENT STATE, DECREASING NUMBERS OF OPERATORS ARE ELIGIBLE FOR THIS PROGRAM EACH YEAR DUE TO THE INCREASINGLY FEWER NUMBER OF PRODUCERS MINING 100,000 TONS OR LESS THROUGHOUT THE COUNTRY. GIVEN TODAY'S SOFT COAL MARKETS, COUPLED WITH THE REGULATORY IMPACTS OF INCREASED BONDING AND PERMITTING COSTS, THERE ARE FEWER OPERATORS WHO CAN AFFORD TO STAY IN BUSINESS OPERATING AT THIS LEVEL OF ANNUAL PRODUCTION. FOR THIS

REASON IT IS ESSENTIAL TO RAISE THE CURRENT STANDARD OF DEFINITION FOR SOAP FROM THE CURRENT PRODUCTION LIMIT OF 100,000 TO A MINIMUM OF 250,000 TONS PER YEAR. THIS ENVELOPES THE SMALL OPERATORS AS EXEMPLIFIED IN MODERN MARKETS AND STILL CLEARLY ACCOMPLISHES THE GOALS OF THE PROGRAM BY BENEFITING THE NEW SMALL OPERATORS AS CONGRESS HAD INTENDED.

ANOTHER PROGRAM WHICH CAN PROVIDE THE SMALL OPERATOR SEGMENT OF THE INDUSTRY AN OPPORTUNITY TO CONTRIBUTE TO NATIONAL COAL PRODUCTION IS THE REMINING OF PREVIOUSLY AFFECTED AREAS, PARTICULARLY IN APPALACHIA.

REMINING

NATIONALLY WE HAVE IN EXCESS OF ONE-MILLION ACRES OF ABANDONED MINE LANDS (AML'S), THE VAST MAJORITY OF WHICH ARE LOCATED IN THE APPALACHIAN COAL MINING STATES OF PENNSYLVANIA, WEST VIRGINIA, MARYLAND, KENTUCKY, TENNESSEE AND ALABAMA. THESE LANDS WERE MINED PRIOR TO THE RECLAMATION PROGRAM REQUIRED BY THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (SMCRA). CONSERVATIVE ESTIMATES SHOW THAT APPROXIMATELY 40-45 PERCENT OF THESE LANDS CONTAIN ADDITIONAL RECOVERABLE RESERVES THAT TODAY CAN BE MINED WITH BOTH ECONOMIC AND ENVIRONMENTAL BENEFITS. THESE PERCENTAGES WILL CONTINUE TO RISE AS VIRGIN COAL LANDS BECOME MORE SCARCE AND EXTRACTION PROCESSES BECOME MORE EFFICIENT.

THE DIRECT PROBLEM FACING THE SURFACE COAL MINING INDUSTRY IS THAT MOST OF THESE SITES HAVE PRE-EXISTING MINE DISCHARGES OF EFFLUENT FAR BELOW THE CURRENT REQUIRED STANDARDS. THE PROHIBITIVE ELEMENT, OR DISINCENTIVE, TO REMINING AT PRESENT STEMS FROM REGULATIONS WRITTEN

BY THE EPA IN IMPLEMENTING THE CLEAN WATER ACT, AND INCORPORATED BY OSM IN IMPLEMENTING THE SURFACE MINING ACT.

EPA HAS DIRECTED THAT PRE-EXISTING DISCHARGES SHOULD BE TREATED AS POINT SOURCE DISCHARGES. THERFFORE, AN OPERATOR WHO REMINES A PREVIOUSLY AFFECTED AREA CONTAINING A POLLUTIONAL DISCHARGE IS REQUIRED TO ABATE OR TREAT THAT DISCHARGE TO MEET EPA'S TECHNOLOGY-BASED EFFLUENT LIMITS PRESCRIBED FOR NEW MINING OPERATIONS. IN PRACTICE, THESE REGULATIONS ASSIGN A PERMANENT WATER TREATMENT LIABILITY TO THE OPERATOR WHO SEEKS TO REMINE AN AREA WITH AN EXISTING POLLUTIONAL DISCHARGE IN ORDER TO MEET EFFLUENT LIMITS AT ALL TIMES. AS LONG AS THE PRESENT EFFLUENT LIMITS CONTINUE TO BE APPLIED TO REMINING OPERATIONS, IT IS UNLIKELY THAT ANY SITES WILL BE REMINED, AND AS A CONSEQUENCE, WILL REMAIN A SOURCE OF ENVIRONMENTAL DEGRADATION. ALTHOUGH THE ABANDONED MINE LAND PROGRAM, FUNDED BY THE COAL INDUSTRY, WILL PROVIDE FOR RECLAMATION OF A GREAT NUMBER OF THESE SITES OVER TIME, THE PUBLIC INTEREST WILL BE MORE EXPEDITIOUSLY ADVANCED BY ENCOURAGING COAL OPERATORS TO REMINE AND RECLAIM ABANDONED SITES.

FOR THIS TO OCCUR, A REGULATORY STRATEGY MUST BE DEVELOPED COOPERATIVELY BETWEEN EPA AND OSM TO PROVIDE A MEANS BY WHICH AN OPERATOR CAN MINE ABANDONED AREAS WITHOUT BEING REQUIRED TO MEET CURRENT NEW SOURCE STANDARDS, AS LONG AS THE PRE-EXISTING POLLUTION DISCHARGES ARE NOT WORSENED. THE LAND WILL BE FULLY RECLAIMED, AN EFFORT WILL BE MADE TO ABATE PRE-EXISTING POLLUTION DISCHARGES, AND WATER QUALITY WILL NOT BE FURTHER DETERIORATED. IN MOST CASES RECLAMATION ITSELF WILL IMPROVE THE WATER QUALITY, SINCE CONTACT BETWEEN THE WATER AND ACID-BEARING MATERIALS CAUSING POOR WATER QUALITY WILL BE REDUCED.

WHEN FEDERAL FUNDS ARE USED TO RECLAIM AN ABANDONED MINE SITE UNDER OSM'S ABANDONED MINE LANDS PROGRAM LIABILITY IS NOT ASSESSED. SO EVEN IF, IN FACT, RECLAMATION IS NOT 100 PERCENT SUCCESSFUL IN RESTORING WATER QUALITY TO EFFLUENT LIMITS THE WATER TREATMENT LIABILITY IS NOT ASSESSED TO THE COMPANY WHO DOES THE WORK BECAUSE IT WAS A FEDERAL OR STATE PROJECT TO RECLAIM THE SITE ON A CONTRACTURAL BASIS. THE LEGAL TRIGGER MECHANISM SEEMS TO BE THE DISTINCTION BETWEEN REMINING IN WHICH COAL IS EXTRACTED, VERSUS RECLAMATION IN WHICH ONLY EARTH MOVING OCCURS. WE DO NOT BELIEVE THAT THIS DOUBLE STANDARD IS REASONABLE -- IN FACT IT IS CONTRARY TO SMCRA WHICH STATES THAT MAXIMUM COAL RECOVERY IS A NATIONAL GOAL. BY ALLOWING THE MINING INDUSTRY THE SAME FLEXIBILITY, THE TAXPAYER COULD BE SAVED BILLIONS OF DOLLARS AND CLEAN UP WOULD BEGIN MUCH SOONER.

IN MANY AREAS, ESPECIALLY IN THE EAST, (YET BECOMING MORE APPLICABLE IN THE WEST OVER TIME) ECONOMICALLY RECOVERABLE COAL RESERVES ARE BECOMING MORE SCARCE. AS AVAILABLE COAL LANDS CONTINUE TO DIMINISH WE WILL EXPERIENCE AN INCREASE IN UNEMPLOYMENT IN ESTABLISHED COAL MINING COMMUNITIES AND WILL SEE SOME COMMUNITIES RELOCATING TO AREAS WHERE NEW COAL RESERVES CAN BE FOUND AND RECOVERED. THIS RELOCATION WILL CAUSE NOT ONLY ECONOMIC HARDSHIP FOR THOSE PERSONS AND BUSINESSES DIRECTLY INVOLVED, BUT ALSO THOSE COUNTIES AND STATES FROM WHICH THEY LEAVE. IT IS WELL KNOWN FACT THAT THE EMPLOYMENT MULTIPLIER IN COAL AREAS IS SUBSTANTIALLY HIGHER THAN THE NATIONAL AVERAGE AND THEREFORE THE RAMIFICATIONS BECOME FAR REACHING. MANY, IF NOT MOST, OPERATORS AND BUSINESSES FACING SUCH A DILEMMA COULD NOT AFFORD TO MOVE AND WOULD GO BANKRUPT, WHICH WOULD EXACT A SEVERE SOCIAL AND ECONOMIC HARDSHIP ON MANY COMMUMITIES. REMINING HOWEVER, WILL REDUCE THE POTENTIAL ECONOMIC DISLOCATION AND PROVIDE NEW EMPLOYMENT OPPORTUNITIES IN HISTORICAL COAL MINING AREAS. BY ENCOURAGING REMINING AND THUS REDUCING RELOCATION IT WILL ALLOW THE COAL INDUSTRY AND ASSOCIATED BUSINESSES TO AMORTIZE CAPITAL COSTS OF IMMOBILE

EQUIPMENT, BUILDINGS, TRANSPORTATION SERVICES SUCH AS TRAIN LINES AND OTHER SHIPPING SERVICES, TIPPLE AND PROCESSING PLANTS, AND MANY OTHER AREAS WHERE LONG-TERM FINANCIAL COMMITMENTS HAVE BEEN MADE. AVOIDING RELOCATION WILL ALSO PREVENT THE EXPENDITURE OF ENORMOUS SUMS OF MONEY FOR NEW STRUCTURES AND EQUIPMENT WHICH WOULD OTHERWISE BE NECESSARY IN THE AREAS OF VIRGIN RESERVES, AND WILL THEREFORE HELP TO ENSURE COAL PRICES REMAIN COMPETITIVE.

PUBLIC RESOURCES ARE TOTALLY INADEQUATE TO DEAL WITH THE AML PROBLEM. FOR EXAMPLE, IN PENNSYLVANIA ALONE THE COST OF RECLAIMING THE 2,000 MILES OF STREAMS POLLUTED BY ACID MINE DRAINAGE, (CAUSED BY PRE-SMCRA MINING) WOULD BE $3.3 BILLION*. (THE ESTIMATED COST TO ABATE ONLY PRIORITY 1 & 2 PROJECTS IN VIRGINIA IS $5.3 MILLION OVER THE PROGRAM LIFE.) THIS AMOUNT EXCEEDS THE $2.678 BILLION WHICH WILL BE GENERATED UNDER TITLE IV OF SMCRA FOR ABATEMENT OF AML SITES THROUGHOUT THE ENTIRE NATION. IT IS CLEAR THAT IF MANY OF THE AREAS ARE TO BE RECLAIMED EXPEDITIOUSLY IT MUST BE DONE THROUGH REMINING OF PREVIOUSLY MINED AREAS.

MARC PROPOSES THAT REMINING OPERATIONS CONTINUE TO BE SUBJECT TO ALL SMCRA REQUIREMENTS, WITH THE EXCEPTION OF WATER QUALITY. INSTEAD, REMINING OPERATIONS SHOULD BE REGULATED BY A POLICY OF NON-DEGRADATION OF THE WATER QUALITY PRESENT AT THE TIME OF THE INITIAL REMINING EFFORT. IMPLEMENTATION OF THIS STANDARD WILL ENCOURAGE REMINING AND RECLAMATION AND WILL PROVIDE SIGNIFICANT ENVIRONMENTAL BENEFITS SUCH AS AESTHETIC BEAUTIFICATION, MINIMIZATION OF EROSION AND SEDIMENTATION, INCREASED LAND STABILITY, ELIMINATION OF ABANDONED HIGHWALLS AND PITS, ETC. FURTHERMORE,

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* [SOURCE: PENNSYLVANIA DEPORTMENT OF ENVIRONMENTAL RESOURCES, OFFICE OF RESOURCE MANAGEMENT, PENNSYLVANIA ABANDONED MINE RECLAMATION PLAN UNDER PROVISIONS OF THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AT 3 (1981).]

THE CONDUCT OF REMINING OPERATIONS UNDER TODAY'S TECHNICAL AND REGULATORY STANDARDS WILL ENSURE EFFICIENT REMOVAL OF COAL, AND PROPER REGRADING AND REVEGETATION OF THE MINE SITE, THEREBY REDUCING PARTICULATE CONTRIBUTIONS AND THE QUANTITY OF ACID-BEARING MATERIAL AND THUS THE LEVEL OF ACIDITY IN REMINING WATER FLOWS.

IN SUMMARY, TO DISCOURAGE REMINING MEANS PRECLUDING RECLAMATION OF MANY AREAS OF ABANDONED MINED LANDS, WHICH IF DONE UNDER STATE OR FEDERAL AML CONTRACTS WOULD COST MILLIONS OF DOLLARS. MOREOVER, WITHOUT REMINING OF ABANDONED SITES AND THE REMOVAL OF MATERIALS CAUSING WATER QUALITY PROBLEMS, THESE POLLUTIONAL DISCHARGES WILL CONTINUE INDEFINITELY. THE CURRENT REGULATIONS MUST BE MODIFIED TO DIMINISH THE UNACCEPTABLY LARGE FINANCIAL RISK INCURRED BY THE REMINING OPERATOR WITH REGARD TO WATER TREATMENT.

MARC URGES THIS SUBCOMMITTEE TO STRONGLY ENCOURAGE OSM AND EPA TO PURSUE A COOPERATIVE RULEMAKING EFFORT NOW! AS OSM STATED IN THEIR FY'85 BUDGET JUSTIFICATION, JOINT STUDIES WITH OTHER FEDERAL AGENCIES AND COOPERATIVE PROJECTS WITH STATE REGULATORY AUTHORITIES FOR WHICH COSTS ARE SHARED, WILL ENSURE THE MOST EFFECTIVE USE OF RESEARCH DOLLARS AND EXPAND THE INFORMATION SOURCES OF EACH AGENCY. WE WOULD ONLY ADD THAT SUCH AN EFFORT WOULD ALSO ENSURE THAT THE MOST EFFICIENT AND ECONOMIC METHODS ARE DEVELOPED TO MEET OUR NATION'S ENVIRONMENT PROTECTION STANDARDS.

YET ANOTHER MEANS OF MAKING THE BEST USE OF LIMITED RESOURCES TO ADVANCE THE STATE-OF THE-ART OF MINING AND RECLAMATION TECHNOLOGY IS THROUGH EXPERIMENTAL PRACTICES AND COOPERATIVE RESEARCH VENTURES WITH INDUSTRY.

8.

EXPERIMENTAL PRACTICES/RESEARCH

OSM HAS ESTABLISHED A SOLID FOUNDATION FOR THE COAL INDUSTRY TO FURTHER ENHANCE ITS MINING AND RECLAMATION CAPABILITY BY OPTING FOR PERFORMANCE STANDARDS, RATHER THAN DESIGN CRITERIA TO MEET THE OBJECTS OF THE ACT. WHEN THE INDUSTRY PROPOSES SUGGESTIONS TO THE LOCAL REGULATORY AUTHORITIES, IN MANY INSTANCES, DESIGN CRITERIA ARE NO LONGER BLOCKING THE WAY FOR DOING A BETTER JOB IN A MORE COST-EFFECTIVE MANNER. IN ADDITION TO THE NEW REGULATORY FLEXIBILITY, OPERATORS· INGENUITY AND EXPERTISE CAN BE FURTHER MAXIMIZED BY MORE FULLY IMPLEMENTING THE EXPERIMENTAL PRACTICES PROVISIONS OF THE ACT. OSM'S APPROVAL OF NINE EXPERIMENTAL PRACTICES OVER THE PAST SEVERAL YEARS, AND ITS WILLINGNESS TO INSTITUTE NUMEROUS OTHERS, INDICATES THE AGENCY'S RECOGNITION OF THE INTEGRAL ROLE INDUSTRY CAN AND SHOULD PLAY IN THE EVOLUTION OF A SOUND REGULATORY PROGRAM. WE CONCUR WITH OSM THAT COMMON SENSE DICTATES THAT, GIVEN THE LIMITED AMOUNT OF RESEARCH FUNDS AVAILABLE IN FY'85, THE EXPERIMENTAL PRACTICES PROGRAM IS AN EFFECTIVE WAY TO DEVELOP MORE EFFICIENT AND ECONOMIC METHODS AND PROCEDURES TO MEET REGULATORY REQUIREMENTS.

OSM IS ALSO COMMENDED FOR ALLOCATING RESEARCH FUNDS TO ADVANCE SCIENTIFIC AND TECHNOLOGICAL REGULATORY IMPLEMENTATION ON THE GROUND. THE AGENCY'S SHORT-TERM STUDIES, INVESTIGATIONS AND DEMONSTRATIONS ARE RESPONSIVE TO QUESTIONS AND TECHNICAL PROBLEMS IDENTIFIED AS A RESULT OF STATES' NEEDS INSPECTIONS, PERFORMANCE REQUIREMENTS AND MINE OPERATOR PROBLEMS. MARC STRONGLY ADVOCATES THIS KIND OF HANDS-ON PROBLEM-SOLVING USING STATE-OF-THE-ART TECHNIQUES IN REGULATORY IMPLEMENTATION AND COMPLIANCE, WHICH ENHANCES THE ASSESSMENT OF NEED FOR POTENTIAL MODIFICATION OF THE RULES GOVERNING MINING AND RECLAMATION OPERATIONS.

ONE SUCH PROGRAM RELATES TO THE CONSTRUCTION OF STILTATION STRUCTURES USING THE "BEST TECHNOLOGY CURRENTLY AVAILABLE" (BTCA) IN ORDER TO MINIMIZE CONTRIBUTIONS OF SEDIMENT TO STREAMFLOW OR RUNOFF OUTSIDE THE PERMIT AREA. OSM RECOGNIZES THAT RESEARCH SHOULD BE APPLIED IN THE FIELD THROUGH DEMONSTRATION PROJECTS OR EXPERIMENTAL PRACTICE PERMITS WHICH MAY PROVIDE DOCUMENTED EVIDENCE THAT ALTERNATIVE SEDIMENT CONTROL TECHNOLOGIES EXIST WHICH CAN BE AS OR MORE EFFECTIVE THAN PONDS IN NUMEROUS CASES FOR MEETING EFFLUENT LIMITATION STANDARDS. ONCE SUCH PRACTICES ARE PROVEN CONSONANT WITH THE OBJECTIVES OF THE ACT, ADDITIONAL CONSIDERATION SHOULD BE GIVEN TO APPROVAL OF ALTERNATIVE SEDIMENT CONTROL PRACTICES. MARC ENCOURAGES OSM TO CONTINUE TO ENGAGE IN SUCH COOPERATIVE VENTURES TO STEADILY IMPROVE MINING AND RECLAMATION TECHNOLOGY.

IN ADDITION TO PROVIDING FOR RESEARCH AND DEMONSTRATION PROJECTS TO ADVANCE MINING PRACTICES AND PROVIDE CONCRETE JUSTIFICATIONS FOR REGULATORY AND/OR STATUTORY MODIFICATION, MARC BELIEVES THERE ARE CURRENT RULES ON THE BOOKS WHICH PLAINLY LACK SUBSTANTIATION AND SHOULD BE REVISED TO REFLECT EXISTING KNOWLEDGE OF OPERATIONAL IMPACTS ON THE ENVIRONMENT. OSM'S STREAM BUFFER ZONE REQUIREMENT IS ONE SUCH EXAMPLE WHICH EXACTS REGULATORY COMPLIANCE COSTS FROM LANDOWNERS AS WELL AS COAL OPERATORS FAR IN EXCESS OF JUSTIFIED ENVIRONMENTAL PROTECTION.

BUFFER ZONES

THE SURFACE MINING CONTROL AND RECLAMATION ACT (SMCRA) REQUIRES THAT DISTURBANCES TO THE HYDROLOGIC BALANCE AND TO WATER QUANTITY AND QUALITY BE MINIMIZED. MARC BELIEVES THE OFFICE OF SURFACE MINING'S HYDROLOGY REGULATIONS ADDRESSING SEDIMENTATION CONTROL, ACID AND TOXIC DRAINAGE CONTROL, RAIN WATER RUNOFF, IMPOUNDMENTS, DIVERSIONS, SURFACE AND GROUND

WATER, AND WATER REPLACEMENT THROUGHLY ASSURE COMPLIANCE WITH THE ACT'S REQUIREMENT. WHILE SMCRA'S BROAD-BASED GOAL IS TO ALLOW MINING TO OCCUR SUBJECT TO SOUND ENVIRONMENTAL PRACTICES, THE PRESENT OSM REGULATION REQUIRING 100 FOOT BUFFER ZONES OF UNDISTURBED LAND ON BOTH SIDES OF PERENNIAL AND INTERMITTENT STREAMS PRECLUDES OVERALL MINING EFFICIENCY, LIMITS THE SIZE AND LOCATION OF OPERATIONS, LESSENS THE RECOVERABLE COAL RESERVES OF THE U.S. AND ABOVE ALL, ADDS NOTHING TO THE PROTECTION PROVIDED BY THE OTHER STRINGENT HYDROLOGY REGULATIONS.

OSM'S RULE IS BASED ON THE ASSUMPTION THAT MINING ACTIVITIES CAN NOT BE CONDUCTED WITHIN 100 FEET OF A STREAM WITHOUT VIOLATING APPLICABLE FEDERAL AND STATE WATER QUANTITY AND QUALITY STANDARDS. HOWEVER, THERE IS NO RECORD JUSTIFICATION TO SUBSTANTIATE THIS CLAIM. IT IS CLEARLY EVIDENT TO THE INDUSTRY THAT MINING ACTIVITIES CAN TAKE PLACE MUCH CLOSER TO THESE SMALL STREAMS WITHOUT VIOLATING THE APPLICABLE WATER STANDARDS. THERE IS NOTHING MAGICAL ABOUT THE PRESENT 100 FOOT ZONE, IN FACT IT IS A TOTALLY ARBITRARY LIMIT WITH REGARD TO BOTH SIZE AND EFFECTIVENESS. IN POINT OF FACT, NONE OF THE HYDROLOGY REGULATIONS BECOME IMPOSSIBLE TO COMPLY WITH SIMPLY BECAUSE A PORTION OF THE MINING ACTIVITY MOVES WITHIN 100 FEET OF A STREAM.

MOREOVER, MARC STRONGLY BELIEVES THERE IS NO STATUTORY JUSTIFICATION FOR OSM TO HAVE TAKEN THIS COURSE OF ACTION AT ALL. IN DRAFTING SMCRA CONGRESS WAS EXTREMELY EXPLICIT IN PROVIDING PROTECTION FOR WATER QUALITY AND QUANTITY. IN OTHER PORTIONS OF THE ACT CONGRESS DIRECTED USE OF BUFFER ZONES AS A FORM OF PROTECTIVE MEASURE, SPECIFICALLY IN THE UNSUITABILITY PROVISIONS OF SECTION 522. HERE IT MANDATED BUFFER ZONES OF BETWEEN 100 AND 300 FEET, FOR SUCH ACTIVITIES AS MINING OPERATIONS

SITUATED NEAR OCCUPIED DWELLINGS, PUBLIC ROADS, CEMETERIES, ETC. THIS IS CLEAR EVIDENCE THAT IF CONGRESS HAD INTENDED TO SET ASIDE DESIGNATED AREAS ALONG STREAMS FROM MINING, IT WOULD HAVE BEEN EXPLICITLY MANDATED SUCH IN THE LEGISLATION. CONGRESS' DECISION TO ESTABLISH RELIANCE ON PERFORMANCE STANDARDS TO PROTECT THE CHARACTERISTICS OF WATER EXCLUDES THE NEED FOR THIS ADDITIONAL ARBITRARY REQUIREMENT.

COAL SEAMS ARE NOT NATURALLY CONFINED BY PROXIMITY TO OVERLYING WATER AND, IN FACT LAND OWNERS FREQUENTLY POSSES ACREAGE ON BOTH SIDES OF A GIVEN STREAM. THEREFORE, IMPLEMENTATION OF THE 100 FOOT BUFFER ZONE EFFECTIVELY CREATES A 200 FOOT BARRIER TO MINING IN MANY AREAS WHERE COAL RICH LAND IS CENTERED BY SUCH A "WATERWAY". THESE BUFFER ZONES HAVE ALREADY RESULTED IN SIGNIFICANT PRODUCTION AND FINANCIAL LOSSES, ESPECIALLY FOR SMALL LANDOWNERS AND PRODUCERS IN THE HUMID EAST WHERE MINING SMALL NON-CONTIGUOUS TRACTS LEASED FROM LOCAL LAND OWNERS IS COMMON. THESE PROHIBITIONS HAVE DIMINISHED THE OPERATIONAL AND ECONOMIC FEASIBILITY OF MINING IN SMALL TRACTS. LAND OWNERS ARE BEING FORCED TO ABSORB UNEXPECTED LOSSES OF INVESTMENTS AND INCOME AND HAVE BEEN DISCOURAGED FROM PURSUING FUTURE LEASING OPPORTUNITIES. THIS RELUCTANCE COUPLED WITH THE LARGE SIZE OF THE BANNED AREAS HAS SUBSTANTIALLY DIMINISHED THE COAL RESOURCES AVAILABLE FOR DEVELOPMENT BY SMALL OPERATORS. THE 200 FOOT ZONE PRECLUDES THE RECOVERY OF MILLIONS OF TONS OF RESERVES AND BECAUSE HYDROLOGICALLY INSIGNIFICANT PERENNIAL AND INTERMITTANT STREAMS CRISS-CROSS MANY OPERATIONS, ENTIRE MINING UNITS BECOME TECHNICALLY OR ECONOMICALLY INFEASIBLE TO MINE.

THE CURRENT NATIONALLY APPLICABLE BUFFER REGULATION DOES NOT TAKE INTO CONSIDERATION SPECIAL CIRCUMSTANCES AS WITNESSED IN THE EAST. THE

REGULATION CLEARLY IMPLIES THAT A STREAM MUST BE DIVERTED IN ORDER TO OBTAIN A MINING WAIVER. IN APPALACHIA HOWEVER, THE NARROW VALLEYS WITH STREAMS ARE OFTEN LESS THAN 100 FEET WIDE AND THERE IS NOT ENOUGH LEVEL AREA TO DIVERT THE STREAMS. MOUNTAINTOP MINING, HEAD-OF-HOLLOW, AND VALLEY FILLS COULD, AS A RESULT, BE PRECLUDED IN MANY INSTANCES ALTHOUGH THE WATER QUALITY STANDARDS COULD STILL BE MET. THEREFORE, MARC SUGGESTS THAT AT A MINIMUM, MINING THROUGH STREAMS WHICH ARE OF LITTLE IMPORTANCE TO THE HYDROLOGIC BALANCE SHOULD BE PERMITTED WITHOUT REQUIRING DIVERSIONS PROVIDED WATER STANDARDS WOULD NOT BE VIOLATED.

MR. CHAIRMAN, MARC BELIEVES THE GOALS OF THE ACT WOULD BEST BE MET BY ALLOWING SITE SPECIFIC AND VARIABLE BUFFER ZONES IF DETERMINED BY THE REGULATORY AUTHORITY TO BE NECESSARY FOR COMPLIANCE WITH STATE AND FEDERAL WATER STANDARDS, RATHER THAN AUTOMATICALLY SADDLING THE ENTIRE INDUSTRY WITH A CONSTRAINT WHICH IN MOST CASES PROVIDES NO ADDED PROTECTION.

ANOTHER PLAIN EXAMPLE OF A SET OF REGULATIONS WHICH HEAVILY IMPACTS CITIZENS AND LOCAL COMMUNITIES ARE THOSE GOVERNING THE DESIGNATIONS OF LANDS UNSUITABLE FOR MINING.

UNSUITABILITY

THE UNSUITABILITY RULES FOR MINING POSE A SIGNIFICANT THREAT OF PERSONAL INCOME LOSSES FROM RENTS AND ROYALTIES FOR LOCAL LANDOWNERS, LOSS OF TAX REVENUES BY LOCAL AND COUNTY GOVERNMENTS, HIGHER UNEMPLOYMENT, LOSS OF A VALUABLE ENERGY RESOURCE, AND SUBSTANTIAL AND COSTLY DELAYS IN PERMITTING NEW MINE OPERATIONS. CLEARLY, THESE FACTORS CANNOT BE TAKEN LIGHTLY; YET OSM'S NEW REGULATIONS DESIGNED TO MITIGATE THE POTENTIALS FOR ABUSE OF SECTION 522 ARE CURRENTLY BEING CHALLENGED IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

SEVERAL INTRINSIC PROBLEMS IN THE PETITION PROCESS HAVE BEEN CLARIFIED AND LIMITED IN OSM'S FINAL RULES TO AVOID JEOPARDIZING THE CONTINUATION OF MINING ACTIVITY AND THE PROPERTY RIGHTS OF LAND AND MINERAL OWNERS. TO MINIMIZE POTENTIAL ABUSES OF THE PETITIONING PROCESS WHILE MAINTAINING THE INTEGRITY OF THE SYSTEM AS ENVISIONED BY CONGRESS, OSM HAS INDENTIFIED THOSE WHO HAVE THE RIGHT TO PETITION AS ONLY THOSE PERSONS WHO ARE OR WILL BE DIRECTLY INJURED BY SURFACE COAL MINING OPERATIONS IN A SPECIFIED AREA. THE AGENCY HAS FURTHER PROVIDED STATE REGULATORY AUTHORITIES SORELY NEEDED DISCRETION REGARDING THE TYPE AND AMOUNT OF INFORMATION REQUIRED IN AN UNSUITABILITY PETITION. THESE MEASURES SHOULD MINIMIZE THE COSTLY AND TIME-CONSUMING DELAYS RESULTING FROM GROUNDLESS PETITIONS, AND SHOULD HELP TO ENSURE THAT OSM'S AND STATES' RESOURCES AND MANPOWER ARE SPENT ON MERITORIOUS PETITIONS.

THE PETITIONING PROCESS CAN EXTEND THROUGH SEVERAL YEARS WITH DELAYS ASSOCIATED WITH APPEALS OF THE REGULATORY AUTHORITY'S DECISION AND THE STAGGERED PRESENTATION OF INDEPENDENT GROUNDS. ALTHOUGH EXISTING MINES CAN CONTINUE TO OPERATE DURING THE INTERIM, NO NEW PERMITS CAN BE ISSUED WITHIN A PETITIONED AREA PRIOR TO A FINAL DECISION. OSM HAS LIMITED THESE UNINTENDED IMPACTS TO SOME EXTENT BY PROHIBITING THE PETITIONING OF AN AREA WHICH IS ALREADY UNDER CONSIDERATION AS PART OF A MINE PERMIT APPLICATION. OF COURSE, THE PUBLIC PARTICIPATION PROCESS REMAINS FULLY INTACT, SINCE THE CHANGE DOES NOT AFFECT ANY PARTY'S RIGHT TO CHALLENGE PERMIT ISSUANCE.

MARC HAS CALLED FOR DEFINITIVE ACTION BY OSM TO PREVENT ABUSES OF THE PETITIONING MECHANISM SINCE THE PROMULATION OF THE ORIGINAL RULES IN 1979. UNFORTUNATELY, SIGNIFICANT AMOUNTS OF TIME AND MONEY HAVE BEEN

EXPENDED BY OSM AND THE STATES IN REVIEWING NUMEROUS PETITIONS FOR UNSUITABILITY -- MANY OF WHICH WERE UNFOUNDED. WHILE THE REVISED RULES OFFER HOPE THAT A MORE REASONED APPROACH WILL BETTER FULFILL THE GOALS OF THE ACT, THE IMPLEMENTATION OF THESE REGULATIONS IS UNCERTAIN BECAUSE OF THE CURRENT LITIGATION. MARC IS HOPEFUL THAT THOSE RULES WILL BE SUSTAINED. HOWEVER, SHOULD THEY BE OVERTURNED, THIS SUBCOMMITTEE SHOULD RECOMMEND CLARIFYING THE STATUTE TO INCORPORATE THE CONCEPTS EMBODIED IN THE CURRENT RULES.

MARC'S ADDITIONAL PRIMARY CONCERNS WITH THE LANDS UNSUITABLE DESIGNATION PROCESS ARE FOUND IN SECTION 522(e) WHICH SETS FORTH FEDERAL, PUBLIC AND PRIVATE MINING PROHIBITIONS. THE FIRST ISSUE RELATES TO THE APPLICATION OF VALID EXISTING RIGHTS (VER). OSM HAD PUBLISHED EXTENSIVE PROPOSED RULES SPELLING OUT NUMEROUS OPTIONS FOR DEFINING VER. OSM ELECTED TO APPLY A "TAKING" TEST IN WHICH THE RA MUST DECIDE WHETHER PROHIBITION OF PROPOSED MINING PLANS WOULD CONSTITUTE A TAKING OF A PERSON'S PROPERTY UNDER THE FIFTH OR FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION THAT WOULD ENTITLE THAT PERSON TO JUST COMPENSATION. MARC HAD RECOMMENDED IN ITS COMMENTS THAT OWNERSHIP OF THE COAL RESOURCES BE CONSIDERED VER. SMCRA'S LEGISLATIVE HISTORY INDICATES THAT THE CONGRESS' INTENT WAS TO ALLOW MINING TO OCCUR, SUBJECT TO VER. LOGICALLY, SUCH RIGHTS CAN ONLY BE INTERPRETED TO MEAN ANYTHING WHICH WAS COMMON PRACTICE AT THE TIME OF PASSAGE OF THE ACT. THE BEST WAY TO MAKE THAT INTERPRETATION IS VIA APPLICABLE STATE LAW, WHICH OSM DOES REQUIRE FOR INTERPRETATION OF DOCUMENTS CONVEYING MINERAL RIGHTS. THIS SUBCOMMITTEE SHOULD STUDY THE MERITS OF THIS OPTION AND MORE CLEARLY DEFINE VER IN THE STATUTE TO ENSURE THAT OPERATORS AND OWNERS WOULD RETAIN THEIR COAL RIGHTS.

THE SECOND 522(e) ISSUE PARTICULARLY INJURIOUS TO SMALL COAL OPERATORS, AS WELL AS SMALL LANDOWNERS, IS THE PROHIBITION OF MINING WITHIN 100 OR 300 FEET OF VARIOUS BUILDINGS AND FACILITIES, THESE ARBITRARY BUFFER ZONES HAVE RESULTED IN SIGNIFICANT PRODUCTION AND FINANCIAL LOSES FOR SMALL LAND OWNERS AND PRODUCERS ON SMALL NONCONTIGUOUS TRACTS LEASED FROM LOCAL LANDOWNERS. APPLICATION OF THE RULE HAS RESULTED IN SUBSTANTIAL ACREAGE BEING LOST IN A LARGE NUMBER OF PERMIT AREAS. IN MANY CASES, AREAS PRECLUDED WERE ACQUIRED WITH ROYALTY ADVANCES THUS DISADVANTAGING THE OPERATOR. HOWEVER, MORE IMPORTANTLY, THESE PROHIBITIONS HAVE DIMINISHED THE OPERATIONAL AND ECONOMIC FEASIBILITY OF MINING THESE SMALL TRACTS. LANDOWNERS ARE BEING FORCED TO ABSORB UNEXPECTED LOSSES OF INVESTMENT AND INCOME, AND HAVE BEEN DISCOURAGED FROM PURSUING FUTURE LEASING OPPORTUNITIES. THIS RELUCTANCE HAS SUBSTANTIALLY DIMINISHED THE COAL RESOURCES AVAILABLE FOR DEVELOPMENT BY SMALL PRODUCERS. THE WIDESPREAD EFFECT OF THESE PROHIBITIONS EXTENDS BEYOND PROPERTY LOSSES TO PRIVATE LANDOWNERS. STATES, LOCAL TOWNSHIPS, CHURCHES AND SCHOOLS SITUATED ON COAL RESERVES ALSO LEASE THEIR LAND TO GENERATE INCOME TO MEET THEIR FINANCIAL OBLIGATIONS. LEGISLATIVELY DENYING PROPERTY OWNERS THEIR COAL RESERVES IS UNJUST.

AT A MINIMUM, THE WAIVER PROVISIONS CURRENTLY APPLICABLE TO OCCUPANTS OF DWELLINGS SHOULD BE BROADENED TO ALLOW WAIVERS BY OWNERS OR CONTROLLING INTERESTS TO PERMIT THEM TO BENEFIT FROM THEIR RESOURCES CONSISTENT WITH THE ENVIRONMENTAL AND SAFETY CONSIDERATIONS. THE CURRENT BARRIERS ARE EXCESSIVE; SOME LESSER DISTANCE SHOULD BE CONSIDERED WHICH PROVIDES FOR PROTECTION AND REFLECTS THE ABILITY OF A COMPANY TO PROVIDE THAT PROTECTION. OTHER REGULATIONS, PARTICULARLY BLASTING REQUIREMENTS, ARE SUFFICIENTLY STRINGENT TO ENSURE THAT PRECAUTIONARY MEASURES ARE TAKEN TO PREVENT DAMAGE TO DWELLINGS IN THE AREA. WHERE BLASTING DOES NOT

OCCUR, WHICH IS COMMON ON SMALLER NON-CONTIGUOUS TRACTS, THE PROHIBITIONS MAKE EVEN LESS SENSE.

IN CONCLUSION MR. CHAIRMAN, I WOULD LIKE TO STATE THAT THE WEALTH OF EXPERTISE OF MARC'S TECHNICAL COMMITTEE -- ENVIRONMENTAL ENGINEERS, HYDROLOGISTS AND SOIL SCIENTISTS -- ARE READILY AVAILABLE TO ASSIST YOUR SUBCOMMITTEE IN ITS REVIEW OF THESE CRITICAL ISSUES. I WOULD NOW LIKE TO TURN TO JEFF JARRETT FOR ANOTHER APPALACHIAN PERSPECTIVE ON SMCRA'S IMPLEMENTATION.

Senator WARNER. Judging from your statement, do you think there are a number of benefits that have flowed under this act?

Mr. WHITEHOUSE. I am not going to crib on you. I think from an environmental standpoint there have been some significant gains. I feel, too, that the pendulum has been placed well over and it is past time for reassessment of the values. Many of the goals that were set certainly are noble. Some have been reached. Some, in fact, thwarted by the act due to the lack of input by technical people from the industry. There are other ways to do things which can allow us profitability and accomplish the same end. I would certainly offer the assistance of MARC and the technical committee of MARC, should you desire any technical input on any of the issues that I have mentioned or those that will come up following.

Senator WARNER. At this time we will take a 5-minute recess to stretch and try and convene promptly about 11 o'clock.

[Recess taken at 10:55 a.m. and reconvened at 11:10 a.m.]

Senator WARNER. Proceed.

STATEMENT OF JEFFREY JARRETT, GENERAL MANAGER, CRAVAT COAL CO., GRAYSON KY

Mr. JARRETT. My name is Jeff Jarrett. I am working with the Cravat Coal Co. We are presently mining in the States of Ohio and Kentucky. We have had land holdings in several other States, I also might add. In view of your earlier comments pertaining to competition overseas, we are having a hard time making it, just like any other coal company in the industry today. And without going into any detail, I might say that within the past few months we pulled equipment out of our mines in Ohio and Kentucky, loaded it on a ship and sent it overseas where it is uncovering coal for us today. We are doing that to survive.

Senator WARNER. And the jobs, for the lack of them, stayed home?

Mr. JARRETT. That is correct.

Just a few issues that I would like to briefly discuss. The first is bonding. Despite significant improvement in the regulations, several problems identified by the industry may preclude an increase in a bond availability for small- and medium-sized coal operators. These issues are grounded in the statute and include the fact that bond amounts can be increased in any amount during the bond period by the State regulatory authority. The uncertainties opposed by citizens rights to challenge bond releases and extension of the bonding company and operator liability, 5 to 10 years after the completion of reclamation, the 5- or 10-year bonding liability causes a few problems. One is with the surety company themselves. As you know, insurance regulations limit the amount of bond insurance companies can write, based on the capital reserves of that company. I worked up a little schematic and I guess the best way to explain this is by example.

If an operator began mining and at the end of the second year completed his mining and his backhoeing and grading at that point, receiving a 50-percent bond release, which would remain in effect until the fourth year when he had established revegetation at that point, would receive another 35 percent of his bond release, less 15-percent residual for the 5-year period. After the end of the seventh year, that insurance company would have over 31 percent of his bonding capabilities ties up in the 5-year bond liability; so even if that insurance company were willing to write the bonds for the small- and medium-sized operators, the amount that he can write is reduced.

Another problem that we are facing because of the 5-year bond liability in the East is with our landowners. The issue also impacts on one of the most significant concerns of landowner-lessors. The extensive time period land is locked up prior to 100-percent bond release prohibits the landowner from farming or grazing on his own property once reclamation activities are completed. That is complicated by the fact that a lot of the areas we are mining on right now are under leases that were written prior to when the 5-year liability started.

We are forced to go back and try to negotiate the leases. Even if we have a legal right to tie up that man's property for 5 years, in reality it doesn't work.

I think probably now would be a good time to talk about prime farm land a little, too. One comment on OSM's requirement that to prove possible mining yield on prime farm land, we have to actually crop the area for 3 years, and the only thing I can say about that is we are coal miners, we are not farmers. It is difficult enough to go tell a farmer anywhere in Appalachia that you can't use your property for 5 years. After we have spent millions of dollars trying to maintain or enhance the land use capability, and we are not going to use it, it doesn't make sense to me.

To complicate that further, if we have to go into farming ourselves, we have a problem.

[The prepared statement of Mr. Jarrett follows:]

STATEMENT
OF
JEFFREY JARRETT

GENERAL MANAGER
CRAVAT COAL COMPANY
GRAYSON, KENTUCKY

REPRESENTING
THE
MINING AND RECLAMATION COUNCIL OF AMERICA

BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RICHLANDS, VIRGINIA
APRIL 18, 1984

GOOD MORNING, MR. CHAIRMAN. MY NAME IS JEFFREY JARRETT. I AM THE GENERAL MANAGER OF CRAVAT COAL COMPANY'S KENTUCKY OPERATIONS, BASED IN GRAYSON, KENTUCKY. THE COMPANY'S HEADQUARTERS ARE LOCATED IN CADIZ, OHIO. I TOO AM A MEMBER OF MARC'S TECHNICAL COMMITTEE AND WOULD LIKE TO OFFER SEVERAL ADDITIONAL ISSUES WHICH IMPACT ON SMALL COAL OPERATORS IN PARTICULAR FOR YOUR CONSIDERATION.

PERMITTING

THE COSTS ASSOCIATED WITH PERMITTING AND BONDING OPERATIONS HAVE BEEN A CRITICAL PROBLEM FOR THE SMALL OPERATOR SINCE THE IMPLEMENTATION OF THE PERMANENT REGULATORY PROGRAM. EXPENDITURES FOR PERMIT PREPARATION UNDER THE PRESENT REGULATORY STRUCTURE HAVE SKYROCKETED TO A RANGE BETWEEN \$60,000 TO \$300,000 COMPARED TO A FIGURE OF \$5,000 PRIOR TO SMCRA. THE DRAMATIC RISE IN THE COST OF BONDING, PERMITTING, ENGINEERING AND OVERALL COMPLIANCE FORCED MANY OPERATORS TO CEASE OPERATIONS, AN OVERWHELMING NUMBER OF THEM PERMANENTLY, AND WILL CONTINUE TO DO SO AS COSTS OF THESE REQUIREMENTS RISE.

AS A RESULT OF THE IMPOSITION OF NATIONAL STANDARDS FOR PERMITTING, OPERATORS ARE FORCED TO PREPARE COMPREHENSIVE PERMIT APPLICATIONS WHICH INCLUDE INFORMATION REQUIREMENTS WHICH DO NOTHING TO FURTHER THE PROTECTION OF THE ENVIRONMENT OR PUBLIC HEALTH AND SAFETY. FOR EXAMPLE, SITE SPECIFIC GROUND WATER MONITORING AND DATA SUBMITTAL IS MANDATORY FOR EVERY PERMIT APPLICANT. MARC BELIEVES THAT IN MANY AREAS, SUFFICIENT MONITORING HAS BEEN HISTORICALLY PERFORMED TO WARRANT VARIANCES FROM THIS REQUIREMENT. IN SEVERAL REGIONS ENOUGH DATA IS CURRENTLY AVAILABLE TO THE RA FOR COMPILATION OF REGIONAL MAPS OF GROUND WATER RESOURCES. IF

THESE MAPS WERE CONSTRUCTED, OPERATORS WITHIN ITS BOUNDARIES WOULD NOT NEED TO CONDUCT THESE INITIAL MONITORING ACTIVITIES, UNLESS, OF COURSE, SUBSTANTIAL EVIDENCE INDICATES UNUSUAL SITE-SPECIFIC CONDITIONS PREVAIL. THIS MODIFICATION ALONE WOULD SAVE SMALL OPERATORS BETWEEN $5,000 AND $10,000 PER PERMIT AREA. AS IT NOW STANDS, MANY COAL OPERATORS ARE PAYING THESE LARGE SUMS OF MONEY TO CONSULTING FIRMS AND/OR EXPENDING AN INORDINATE AMOUNT OF COMPANY TIME FOR PRODUCTION OF THIS DUPLICATIVE DATA. THIS NEED NOT OCCUR IF THE RA WOULD REVIEW AND CORROLATE ITS DATA INTO A WORKABLE AND REPRESENTATIVE MODEL, AND WAS AFFORDED THE OPPORTUNITY BY OSM TO USE THIS INFORMATION FOR MODIFICATION OF CURRENT PERMITTING REQUIREMENTS. UNFORTUNATELY, OUR EXPERIENCE INDICATES THAT RA'S ARE NOT ENTHUSIASTIC ABOUT THIS RECOMMENDED APPROACH, NOT DUE TO ENVIRONMENTAL SHORTFALLS, BUT RATHER BECAUSE THEY BELIEVE SUCH AN EFFICIENT SYSTEM LEADS TO STAFF REDUCTIONS AND BUDGET CUTS. THE ACT, OF COURSE, WAS NOT INTENDED TO BE AN EMPLOYMENT TOOL, BUT A VEHICLE FOR PROTECTING PUBLIC HEALTH AND ENVIRONMENT. THEREFORE, THE RA'S CONCERNS ARE UNJUST AND MUST NOT BE ALLOWED TO CONTINUE AS A LIMITING FACTOR TO EFFICIENT ATTAINMENT OF SMCRA'S GOALS.

OTHER REQUIREMENTS OF THE PERMITTING PROCESS ARE EQUALLY FRUITLESS. STATE AND FEDERAL REGULATION OF SURFACE COAL MINING OPERATIONS IS QUITE STRINGENT AND EXPLICIT. PERMIT APPLICANTS SHOULD BE ALLOWED TO REFERENCE THE SPECIFIC SECTION OF THE REGULATION RATHER THAN DUTIFULLY REWORDING THE REGULATION IN THE APPLICATION ITSELF. THIS WOULD SAVE TIME AND MONEY WITHOUT IMPACTING THE GOALS OF THE ACT. COMPLIANCE WITH THE REGULATIONS IS NOT BEING CONTESTED, BUT CREATIVE PARAPHRASING DOES NOT SERVE ANY

PURPOSE OTHER THAN CREATING WORK FOR THE RA AND A BURDEN ON THE OPERATOR.

UNNECESSARY AND DUPLICATIVE PERMIT REQUIREMENTS DO NOT ENHANCE ACHIEVEMENT OF THE ACT'S ENVIRONMENTAL PROTECTION GOALS. THEY DO NOT CHANGE CONDITIONS OCCURRING IN THE FIELD. UNTIL THESE AND OTHER REQUIREMENTS BECOME LESS BURDENSOME, PARTICULARLY FOR THE SMALL COAL OPERATOR, THE ESCALATING COSTS OF PERMITTING WILL CONTINUE TO DRIVE OPERATORS OUT OF THE INDUSTRY AND PREVENT OTHERS FROM ENTERING OR REENTERING.

AN ALARMING ISSUE IMPERILING THE ABILITY OF SMALL OPERATORS TO CONTINUE IS THE DIFFICULTY IN SECURING PERFORMANCE BONDS. THIS THREAT, AS WITH PERMITTING, IS NOT A RESULT OF OUR INABILITY TO MINE COAL AND RECLAIM LAND IN AN ENVIRONMENTALLY SOUND MANNER -- IT IS ATTRIBUTABLE TO UNNECESSARY AMBIGUITY IN THE STATUTORY AND REGULATORY FRAMEWORK. UNDER THE STATUTORY REQUIREMENTS AS WELL AS THE 1979 OSM REGULATIONS, SURETY COMPANIES EITHER STOPPED WRITING COAL MINING BONDS ALTOGETHER, LIMITED THEIR BONDING TO LARGER COMPANIES, AND/OR REQUIRED PRODUCERS TO PLEDGE COLLATERAL, OFTEN EQUAL TO THE BOND'S FACE VALUE, IN ADDITION TO PAYING THE BOND PREMIUM.

WE ARE RELIEVED TO REPORT THAT OSM'S NEW BONDING REGULATIONS OFFER BETTER PROSPECTS FOR SMALL AND MEDIUM SIZE SURFACE COAL MINE OPERATORS TRYING TO SECURE BONDS. THE AVAILABILITY OF INCREMENTAL AND PHASE BONDING SCHEMES IS LIKELY TO EASE THE FINANCIAL BURDEN OF THE COAL OPERATOR, SINCE THESE SYSTEMS LIMIT THE SURETY COMPANY'S LIABILITY. HOWEVER, IN ORDER TO ACTUALLY MEAN SOMETHING TO OPERATORS AND SURETIES, STATES, ESPECIALLY IN APPALACHIA WHERE SMALL OPERATORS PREDOMINATE, WILL HAVE TO INCORPORATE THESE FLEX-

IBLE ALTERNATIVES INTO THEIR PROGRAMS IN A TIMELY MANNER SO THE BENEFITS CAN BE REALIZED ON THE LOCAL LEVEL.

DESPITE SIGNIFICANT IMPROVEMENTS IN THE REGULATIONS, SEVERAL PROBLEMS HERETOFORE IDENTIFIED BY THE SURETY INDUSTRY MAY PRECLUDE AN INCREASE IN BOND AVAILABILITY FOR SMALL OPERATORS. THESE ISSUES ARE GROUNDED IN THE STATUTE AND INCLUDE: THE FACT THAT BOND AMOUNTS CAN BE INCREASED AT ANY TIME DURING THE BOND PERIOD BY THE STATE REGULATORY AUTHORITY; THE UNCERTAINTY IMPOSED BY CITIZEN'S RIGHTS TO CHALLENGE BOND RELEASE; AND THE EXTENSION OF THE BONDING COMPANY AND OPERATOR LIABILITY FIVE TO TEN YEARS AFTER MINING OPERATIONS CEASE.

AN ADDITIONAL FACTOR HAS BECOME CRITICAL IN RECENT MONTHS WHICH IS NOT EXCLUSIVELY A CONCERN OF THE SMALL OPERATOR. OSM HAS JUST COMPLETED A REVIEW OF ITS 1982 OVERSIGHT POLICY WHICH SETS FORTH THE AGENCY'S AND STATES' ROLES AND PROCEDURES FOR EVALUATION OF STATE PROGRAM IMPLEMENTATION. ENCOMPASSED IN THIS PROCESS IS OSM'S PLAN FOR REVIEW OF STATE BOND RELEASES. OSM HAS ADOPTED A POLICY OF CITING OPERATORS FOR NOTICES OF VIOLATION DESPITE TOTAL BOND RELEASE IF IT CAN BE DETERMINED THAT THE BOND WAS IMPROPERLY RELEASED BY THE STATE. SUCH A CITATION CONSTITUTES EXTENDED OPERATOR LIABILITY BEYOND THE 5-10 YEAR PERIOD OF RESPONSIBILITY PLAINLY SET FORTH IN THE STATUTE. OSM ARGUES THAT LIABILITY CEASES UNLESS A PERFORMANCE STANDARD WAS NOT MET PRIOR TO BOND RELEASE THEREBY CONSTITUTING IMPROPER RELEASE. THE AGENCY SAYS IT WILL SHOULDER THE BURDEN OF PROOF TO DEMONSTRATE THAT THE PERFORMANCE STANDARD WAS NOT ACHIEVED.

HOWEVER, MARC MEMBERS ARE EXTREMELY CONCERNED ABOUT THE DIFFICULTY IN MAKING THIS DETERMINATION. SEVERAL CLEAR EXAMPLES POINT TO THE SUBTLETIES WHICH MAY ENTANGLE THIS POLICY AND ULTI-

MATELY PROVE VERY ONEROUS TO OPERATORS SEEKING RELEASE. PERFORMANCE STANDARDS RELATED TO REVEGETATION SUCCESS, SUBSIDENCE, OR SLIDES ARE ALL AREAS SUBJECT TO NATURAL ENVIRONMENTAL CONDITIONS AND WILL UNDOUBTEDLY BE DIFFICULT TO ASSESS SEVERAL YEARS AFTER THE OPERATION HAS CEASED AS HAVING "FAILED" BEFORE OR AFTER RELEASE. DESPITE OSM'S CLAIMS THAT THE BURDEN WILL LIE WITH THE AGENCY TO PROVE THIS, MARC BELIEVES IN PRACTICE THE BURDEN WILL ULTIMATELY FALL SQUARELY ON THE OPERATOR TO SHOW HE WAS IN COMPLIANCE AT THE TIME OF RELEASE.

THIS POLICY HAS FAR-REACHING RAMIFICATIONS. OPERATORS WILL HAVE TO INCUR SUBSTANTIAL ADDITIONAL EXPENSE TO DEMONSTRATE AND DOCUMENT THAT ALL PERFORMANCE STANDARDS WERE MET PRIOR TO BOND RELEASE (FROM BASIC PHOTOGRAPHS TO EXTENSIVE STATE-OF-THE-ART SCIENTIFIC MEASURING DEVICES FOR SUCH STANDARDS AS PERCENTAGE OF RECOVERED REVEGETATION). WE PREDICT STATE REGULATORY AUTHORITIES ALREADY FEARFUL OF OSM REPRISAL FOR ITS JUDGMENTS ON PROGRAM IMPLEMENTATION, WILL BE VIRTUALLY PARALYZED FROM MAKING THEIR OWN DECISIONS ON TOTAL BOND RELEASES, AND MAY DEPEND ON OSM CONSENT FOR EACH AND EVERY PERFORMANCE BOND RELEASE. THIS WOULD CLEARLY OBVIATE THE VERY PREMISE OF STATE PRIMACY. FINALLY, CONTINUED IMPLEMENTATION OF THIS POLICY COULD EFFECTIVELY SHUT THE DOOR, ONLY RECENTLY WEDGED OPEN BY THE OSM BONDING REGULATIONS, IN THE FACE OF SMALL OPERATORS STRUGGLING TO SECURE BONDS WITH ANYTHING LESS THAN 100 PERCENT COLLATERAL POSTED. IT IS FAIRLY PREDICTABLE THAT SURETIES ALREADY CONCERNED WITH THE STATUTORILY MANDATED 5-10 YEAR POST MINING LIABILITY PERIOD AND THE RISKS ASSOCIATED WITH THIS LONG TERM BOND COMMITMENT WILL BE EVEN LESS LIKELY TO BOND SURFACE COAL MINE OPERATORS POTENTIALLY SUBJECT TO INDEFINITE

LIABILITY AND/OR RELUCTANCE OF STATE REGULATORY AUTHORITIES' TO RELEASE BONDS IN A TIMELY FASHION.

MARC SOLICITS THE SUBCOMMITTEE TO SET OSM ON THE CORRECT OVERSIGHT COURSE AND TO STICK TO ITS INITIAL MISSION TO ENSURE STATES ARE IMPLEMENTING THEIR PROGRAMS IN A FORTHRIGHT MANNER IN COMPLIANCE WITH THE LAW AND REGULATIONS. OSM SHOULD NOT USE UNAUTHORIZED POWER TO INVOKE PROGRAM OVERSIGHT. IF IT IS PERMITTED TO, STATE PRIMACY WILL BECOME A MERE SHADOW OF OSM.

ASIDE FROM OUR CONCERNS REGARDING THE POTENTIAL POLICY RAMIFICATIONS OF AN EXTENSION OF THE REVEGETATION LIABILITY PERIOD, MARC BELIEVES THAT THE STATUTORY REQUIREMENT ITSELF MAY BE UNWARRANTED. IN THE EAST, SINCE THE PASSAGE OF THE ACT, EXPERIENCE AND IMPROVED TECHNOLOGY HAS DEMONSTRATED THAT REVEGETATION CAN BE SUCCESSFULLY ESTABLISHED IN FEWER THAN FIVE YEARS. AS A CONSEQUENCE, WE SUGGEST THAT THE MINIMUM LIABILITY PERIOD BE DETERMINED BY THE REGULATORY AUTHORITY BASED ON LOCAL CONDITIONS AND EXPERIENCE WITHIN EACH STATE.

THESE ISSUES ALSO IMPACT ON ONE OF THE MOST SIGNIFICANT CONCERNS OF LANDOWNER-LESSORS. THE EXTENSIVE TIME PERIOD LAND IS LOCKED UP PRIOR TO 100 PERCENT BOND RELEASE PROHIBITS THE LANDOWNER FROM FARMING OR GRAZING ON HIS OWN PROPERTY ONCE RECLAMATION ACTIVITIES ARE COMPLETED. THIS REQUIREMENT MUST BE MORE FLEXIBLE TO ALLOW POST-MINING LAND USES CONSISTENT WITH THE NEEDS OF THE SURFACE OWNER. IF RELIEF IS NOT FORTHCOMING, OPERATORS FEAR THAT FUTURE LEASES WILL BE HARDER TO OBTAIN, AS SURFACE OWNERS BECOME MORE RELUCTANT TO TURN OVER THEIR LAND FOR LENGTHY PERIODS OF TIME. SIMILARLY, REMOVAL OF THE PROVISION CALLING FOR THE TIME PERIOD TO BEGIN AFTER THE LAST YEAR OF AUGMENTED SEEDING, WHICH CURRENTLY HAS THE POTENTIAL TO EXTEND BOND RELEASE SCHEDULES TO 7 ½ YEARS IN THE EAST, WILL FURTHER ENSURE THAT THE REQUIREMENTS MORE ACCURATELY REFLECT IMPROVED REVEGETATION TECHNOLOGY.

PRIME FARMLAND

ANOTHER RECLAMATION ISSUE OF KEEN INTEREST TO MARC MEMBERS IS THE REQUIREMENT THAT COAL OPERATORS PROVE THAT RESTORED PRIME FARMLAND IS CAPABLE OF PRODUCING YIELDS EQUIVALENT TO PREMINING YEARS THROUGH ACTUAL CROPPING OF THE MINED LAND. MARC FULLY CONCURS WITH CONGRESS' INTENT TO PROTECT AND ENSURE THE PRODUCTIVE CAPABILITY OF OUR NATION'S PRIME FARMLANDS, HOWEVER, THE METHODOLOGY ADOPTED BY OSM FOR PROVING RESTORATION OF SOIL PRODUCTIVITY IS STILL TROUBLESOME.

MARC BELIEVES THAT CONGRESS DID NOT INTEND FOR COAL OPERATORS TO ACTUALLY FARM THE MINED LAND. RATHER THAN DEMONSTRATING RESTORATION OF SOIL CAPABILITY THROUGH ACTUAL CROPPING, WE MAINTAIN THAT A TECHNOLOGICAL DEMONSTRATION THROUGH THE USE OF SOIL SURVEYS CAN PROVIDE SUFFICIENT EVIDENCE THAT PRIME FARMLAND CAPABILITY HAS BEEN RESTORED BY THE OPERATOR.

FURTHER, THE INDUSTRY IS COMMITTED TO WORKING CLOSELY WITH SOIL SCIENTISTS AND OTHER RESEARCHERS TO IMPROVE PRIME FARMLAND PRODUCTIVITY. TO DATE, MANY SCIENTIFIC TEST PLOTS HAVE SHOWN THAT BLENDING OF SUBSOILS CAN BE AS PRODUCTIVE AS PUTTING SOIL BACK IN ITS ORIGINAL SEQUENCE. IN FACT, SOME STUDIES FORESEE SURFACE MINING AS A CHANCE TO DESIGN AND BUILD BETTER SOILS THAN CURRENTLY EXIST THROUGH BLENDING SUBSOILS WITH DEEPER MATERIALS AND DILUTING OR FORTIFYING THE CURRENT CHEMICAL CONTENT OF THE SOIL. HIGHER LEVELS OF AGRICULTURAL MANAGEMENT ARE ALSO BEING

TRIED TO INCREASE PRODUCTIVITY LEVELS.

EXAMPLES OF SUCH ARE DIFFERENT TECHNOLOGIES FOR CROP ROTATION, FERTILIZATION, AND THE USE OF SOIL-BUILDING PLANTS AND GRASSES. BECAUSE OF THE EXTENDED TIME PERIOD REQUIRED TO IMPLEMENT SUCH MANAGEMENT TECHNIQUES, MANY YEARS ARE NECESSARY TO EVALUATE THE LONG-TERM IMPACT OF SUCH TECHNIQUES. RESULTS FROM SOME STUDIES HAVE INDICATED THAT CHARACTERISTICS OF DISTURBED LANDS WILL DIFFER FROM CASE TO CASE, AND THAT INDIVIDUAL SOIL MIXTURES AND SOIL MANAGEMENT TECHNIQUES SHOULD BE STUDIED AND APPLIED TO FIT SPECIFIC SITUATIONS. WHILE THE FIRST CONSIDERATION OF THE MINING INDUSTRY IS TO DETERMINE THE BEST AND MOST COST-EFFECTIVE RECLAMATION METHODS, IT IS CONCEIVABLE THAT AN ADDED BENEFIT TO STRIP MINING FARM LANDS IS THE ACCESS TO DATA WHICH WILL BE OF VALUE IN IMPROVING PRODUCTIVITY OF MARGINAL AND PRIME FARMLANDS IN NON-MINING SITUATIONS. THE ACT CURRENTLY DOES NOT PROVIDE THE NEEDED FLEXIBILITY TO DEMONSTRATE VARIOUS TECHNOLOGIES.

ABANDONED MINE LANDS

MARC IS COMMITTED TO WORKING WITH OSM AND THE CONGRESS TO ASSURE AGGRESSIVE IMPLEMENTATION OF THE ABANDONED MINED LAND PROGRAM. OBLIGATION OF THE AML FUND HAS BEEN SLOWED IN THE PAST BY DELAYS IN STATES OBTAINING PRIMACY UNDER SMCRA, A PRECONDITION TO OSM APPROVAL OF A TITLE IV AML PROGRAM FOR A PARTICULAR STATE. FORTUNATELY, CURRENT OSM OFFICIALS AND STATE LEGISLATORS AND REGULATORS HAVE WORKED ARDENTLY OVER THE PAST SEVERAL YEARS TO IMPLEMENT THE PRIMACY PROGRAM AND AS A RESULT EVERY MAJOR COAL PRODUCING STATE HAS NOW ACHIEVED PRIMACY AND AML PROGRAM APPROVAL. AS A CONSEQUENCE THE FEDERAL BARRIERS TO FULL IMPLEMENTATION OF

THIS PROGRAM HAVE BEEN CLEARED. WE APPRECIATIVELY ACKNOWLEDGE OSM'S FINE EFFORTS IN THIS REGARD. HOWEVER, MARC IS NOW ANXIOUS TO SEE THE INDUSTRY-FINANCED PROGRAM IMPLEMENTED BY OSM MORE QUICKLY AND EXTENSIVELY THAN AT PRESENT. INCREASED OUTLAY OF AML MONIES ARE JUSTIFIABLE AND NECESSARY SO THAT THE WIDESPREAD RECLAMATION CAN BEGIN TO MITIGATE THE ENVIRONMENTAL IMPACTS OF THESE PRE-LAW ABANDONED LANDS.

MARC IS KEENLY INTERESTED IN AN AGGRESSIVE PROGRAM BECAUSE IT WILL RECLAIM LAND LEFT ORHPANED BEFORE THE PASSAGE OF THE SMCRA ALLEVIATING HEALTH, SAFETY, AND ENVIRONMENTAL PROBLEMS AND WILL PUT IDLE WORKERS TO PRODUCTIVE WORK AT A TIME WHEN CRISIS PROPORTION UNEMPLOYMENT AND EXCEEDINGLY LOW DEMAND CONTINUE TO FACE THE COAL INDUSTRY. MUCH OF THE MONEY ALREADY COLLECTED REMAINS IDLE IN A NON-INTEREST BEARING ACCOUNT. SPENDING THIS MONEY WOULD CONTRIBUTE TO CONTINUING ECONOMIC RECOVERY WITHOUT RAISING NEW TAXES OR EFFECTING MOVEMENT TOWARD A BALANCED BUDGET. THE STATES, WHO RIGHTFULLY HAVE PRIMARY RESPONSIBILITY FOR THE PROGRAM HAVE, THROUGH THEIR OWN EFFORTS AND THE DILIGENCE OF OSM, LAID THE LEGAL AND PRACTICAL GROUND WORK TO DO THE JOB NOW. THEREFORE, CONSISTENT WITH THE PRIORITIES OF THE ACT, STATES MUST BE AFFORDED THE LATITUDE TO IDENTIFY AND FUND PROJECTS. OSM MUST PROVIDE TIMELY AND FULL FUNDING.

BETWEEN 1977 AND THE END OF 1983 THE COAL INDUSTRY, WHICH IS THE SOLE SOURCE OF THE FUND, HAS PAID $1.1 BILLION INTO THE AML PROGRAM. CUMULATIVE GRANTS AWARDED TO STATES DURING THIS SAME PERIOD AMOUNTED TO ONLY $603.8 MILLION, LEAVING AN UNAPPROPRIATED BALANCE OF NEARLY $496.5 MILLION. OSM ANTICIPATES THAT THIS UNAPPROPRIATED BALANCE WILL BE REDUCED TO $359.4 MILLION IN FY 85.

OSM OFFICIALS RECENTLY STATED THAT THEIR GRANT AWARDS ARE EXPECTED TO FOLLOW THE CURRENT TREND AND THAT THE UNAPPROPRIATED BALANCE WILL BECOME ZERO BY THE YEAR 1993. OSM'S FY 85 AML FUNDING REQUEST IS $291.7 MILLION, AN INCREASE OF $20.5 MILLION OVER 1984.

THIS REQUEST EXCEEDS ANTICIPATED RECEIPTS IN 1984 BY MORE THAN $84 MILLION. ALTHOUGH THIS IS ENCOURAGING, THE ALARMING ELEMENT IS THAT STATES REQUESTED $309 MILLION FOR FY 85, YET OSM PROPOSED ONLY $263 MILLION FOR STATE GRANT FUNDING.

WE EXTEND OUR APPRECIATION TO OSM FOR RECOGNIZING THAT IDLE AML FUNDS DO NOT BENEFIT THE PUBLIC OR THE ENVIRONMENT, HOWEVER, WE BELIEVE APPROPRIATION OF THESE MONIES MUST BE EXPEDITED STILL FURTHER. ECONOMIC AND ENVIRONMENTAL SENSE DICTATES THAT THE AML PROGRAM BE ACCELERATED TO DRAW DOWN THE TRUST FUND OVER THE NEXT 2-3 YEARS AND PUT IT INTO AN ANNUAL BALANCE OF RECEIPTS AND EXPENDITURES YEARLY THEREAFTER UNTIL ITS CONCLUSION IN 1992. ACCELERATED IMPLEMENTATION OF THE PROGRAM WOULD PROVIDE A MUCH NEEDED STIMULUS TO A DEPRESSED INDUSTRY WITH SUBSTANTIAL ECOLOGICAL BENEFITS. IF THE AML FEE IS NOT PUT TO ITS INTENDED USE QUICKLY, IT BECOMES JUST ANOTHER PUNITIVE TAX ON COAL AT A TIME WHEN THE U.S. COAL INDUSTRY IS STRUGGLING TO HOLD ON TO SHRINKING MARKETS.

OSM PLACES EMPHASIS ON THE STATE AML GRANT PROGRAM COMPARED TO OTHER SPENDING AUTHORITIES IN ITS FINAL POLICY STATEMENT. WE STRONGLY ENCOURAGE OSM TO REFLECT THAT EMPHASIS IN ITS FUNDING REQUEST AND ITS APPROVAL OF STATE PROJECT APPLICATIONS. WE FEEL THAT OSM SHOULD GIVE A FAIR PRESUMPTION TO STATE REQUESTS, PARTICULARLY SINCE BASING FUNDING ESTIMATES ON EXISTING STATE ESTIMATES DRASTICALLY UNDERSTATES WHAT CAN BE ACCOMPLISHED IF STATES ARE ENCOURAGED TO ACTIVELY PURSUE RECLAMATION PROJECTS THROUGH

AVAILABILITY OF FUNDS AND THROUGH CLEARING AWAY ADMINISTRATIVE HURDLES TO APPROVAL OF STATE REQUESTS. ADDITIONALLY, WE AGREE WITH OSM THAT IT IS CONSISTENT WITH A SOUND PROGRAM TO USE THE SECRETARY'S SHARE OF THE TRUST FUND TO SUPPLEMENT THE STATE SHARE SINCE THE SECRETARY'S SHARE IS DESIGNED IN PART TO FUND PROJECTS WHICH MIGHT ESCAPE A STATE PROGRAM BECAUSE OF AN IMBALANCE BETWEEN NEEDS AND STATE'S SHARE IN A PARTICULAR STATE.

MARC ALSO BELIEVES THERE IS ROOM IN THE PROGRAM TO SUPPORT A LIMITED RESEARCH AND DEVELOPMENT PROGRAM WHICH IS CONSISTENT WITH THE INTENT OF THE ACT. TO THE EXTENT THE STATES ARE ABLE, AS PART OF A RECLAMATION PROJECT OTHERWISE FUNDABLE, TO INCLUDE A SMALL ADDITIONAL AMOUNT OF R&D THEY SHOULD ALLOW SUCH INCREMENTAL R&D FUNDING AS PART OF THE STATE'S SHARE AND SUPPLEMENT IT FROM THE SECRETARY'S SHARE WHERE APPROPRIATE. SUCH SMALL ADDITIONAL AMOUNTS OF FUNDING CAN HELP STRETCH FUTURE RECLAMATION DOLLARS. FINALLY, MARC ENVISIONS PROJECTS WHICH ARE PARTICULARLY COST EFFECTIVE BEING ENCOURAGED BY OSM AND THE STATE EVEN IF NOT OF THE HIGHEST PRIORITY. FOR EXAMPLE, ABANDON MINE LANDS ADJACENT TO ONGOING OPERATIONS MIGHT BE CLEANED UP EFFICIENTLY BY THAT OPERATOR WITH ONLY MINOR EXPENSE TO THE AML FUND.

MR. CHAIRMAN, AS MYSELF AND AL WHITEHOUSE SAID, MARC IS EAGER TO SEE OUR NATION'S ABANDONED MINE LANDS CLEANED UP AS QUICKLY AND EFFICIENTLY AS POSSIBLE. IF SERIOUS CONSIDERATION IS GIVEN TO OUR PROPOSALS, AN INCREASE IN REMINING AND AML OPERATIONS WILL OCCUR WHICH WILL HELP TO MORE EXPEDITIOUSLY ACHIEVE THE CONGRESSIONAL INTENT OF ABANDONED MINE LANDS BEING RECLAIMED.

Senator **Warner**. I operate a number of big farms. I know a little bit about agriculture, having been in it most of my life. I agree with that. You can't farm it for 5 years? What do you do with a cover crop?

Mr. **Jarrett**. You can farm it for 5 years. After we complete our reclamation and establish revegetation, like I said, we are not farmers, we don't want to do anything with it for 5 years.

Senator **Warner**. Is it your point that period is too long? What is your point?

Mr. **Jarrett**. My point is that we have demonstrated I think in past practice that after two growing seasons from augmented seeding and fertilization, we feel we should have 100 percent bond release.

Senator **Warner**. And do you think at that time that the farmers then could go back to utilizing the land?

Mr. **Jarrett**. They are going to do it anyway. Legally we might have a right to stop them, but what are we going to do? Go put them in prison?

Senator **Warner**. Practically speaking, the go ahead and begin to use it?

Mr. **Jarrett**. That is correct.

Senator **Warner**. You are still stuck on the bond for 3 years?

Mr. **Jarrett**. Yes, and the fact that they argue, we can't manage their agricultural practices. Some of them have good practices. Some of them have poor practices. We can't manage all of their practices and control that. If you have landowners that are practicing poor agricultural practices, we are stuck with the bond liability. That has been a problem. That has always been a problem even prior to the enactment of the act, and is complicated more by the 5-year bond liability.

An additional factor that has become very critical in recent months, which is not exclusively a concern of the small operator, of all operators, is that OSM has just completed a review of its 1982 oversight policy, which sets forth the Agency's and the State's rules and procedures for evaluating State program implementation. Encompassed in this process is OSM's plan for review of State bond releases. OSM has adopted a policy of citing operators on noncompliance for areas that have already received 100 percent bond release. Now OSM has assured us that this will happen only when it is demonstrated that the bond was improperly released and that the burden of proof will fall on their shoulders. The practicality of it, there is no such thing as burden of proof falling on regulatory authority's shoulders. It will ultimately end up in the operator's lap.

Senator **Warner**. All right. That is a very helpful contribution. If you have other points, we will accept them for the record. We are going to have to move along.

STATEMENT OF PAUL GOAD, JR., SENIOR VICE PRESIDENT, OPERATIONS, ASHLAND COAL, INC., HUNTINGTON, WV

Mr. **Goad**. My name is Paul Goad. I am senior vice president of operations for Ashland Coal, Inc. Ashland Coal is headquartered in Huntington, WV, and we are a substantial coal producer in the States of Kentucky and West Virginia.

We produce low-surplur coal for utility consumption, both here in the States and overseas.

I was delighted to hear your comments earlier about your interest and your fellow Senators' interest in the market situation that presently exists. We used to address it as an export market. It now becomes an export-import market, and I think——

Senator WARNER. As you know, I have been trying for several years now, together with Senator Byrd of West Virginia and others to get the deepening of the harbors to export coal. We are going to have to change the title to export and import of coal, if we get the harbors.

Mr. GOAD. That is true.

Unfortunately, that circumstance could very well become more severe in the next few years. Mexico and Brazil have recently announced major coal discoveries, so you have got potential not only of Colombia, but other South American countries.

Our major competition in Europe now, and we were a major exporter 2 years of export coal to Europe, our major competition there now is South Africa.

Senator WARNER. And Poland and Australia.

Mr. GOAD. Our major competition is South Africa. They can drop coal in Rotterdam at $33 a ton and most Appalachian coal mines cannot even put it to the east coast for that type of money. The situation is bad now, but it is going to get worse, with the expansion of the South African coal and expansion of Australian coal. All of the efforts that you have talked about are greatly needed.

Coal is a commodity, and for the coal industry in America to survive, we must view the marketing of our coal in a low-cost production mode and all of the developments that we have talked about here today have added to the cost of producing a ton of coal.

I am not here to debate the merits of whether they were valuable or not valuable. Some were and some weren't. But the fact remains that the cost of producing a ton of coal in Appalachia has risen substantially. If we are to survive in the world marketplace, and that is what it is becoming, then we must have a reduction in the cost of a ton of Appalachian coal.

We in our company have adopted a philosophy of using larger machinery. We no longer can surface mine in West Virginia with conventional endloaders and what you would normally view as the small spread-type operation. We have gone to large electric shovels and large draglines to try and gain economies of scale. That is the only way that we could survive. Smaller companies don't have that flexibility. That was a tremendous capital investment. We have practically stopped mining in eastern Kentucky for the same reason. Our reserves did not lend themselves to that large machinery. We have shut our operations down. We presently are only operating one mine in Kentucky.

Senator WARNER. Surface mine?

Mr. GOAD. One surface mine. Three years ago we had 900 employees in Kentucky. It is a drastic loss of jobs.

Senator WARNER. What do you have now?

Mr. GOAD. Now we run one shift, one spread a day. We have got about 16 employees working.

Senator **Warner**. Compared to 900?

Mr. **Goad**. Compared to 900 3 years ago.

We have shifted some of those people to West Virginia. It illustrates the point. With those costs and facing these competitive pressures, the coal industry has got to have help, or you will see more and more jobs shut down and more and more people lose their jobs.

Most of the comments I had in my written testimony have already been addressed. To help with the time situation, I would just like to add a few points that would highlight it.

Senator **Warner**. That would be appreciated.

Mr. **Goad**. Some of the critical areas. I was to speak on disposal of excess spoil and highwall elimination. I will start with the excess spoil. You are very familiar with the history of the valley fill and the derivation of the history of the valley fill. We started with the 18-inch lift. We went to the 4-foot lift. Industry put fourth an effort to show the cost impact of that. It was a tremendous cost impact. I testified in Washington 3 or 4 years ago as to that cost impact. It cost our company in excess of $3 a ton just the hauldown component of the rock, end of the valley fill. Other companies have put forth similar examples. I think testimony reveals from $3 to $5 as the cost of that component alone.

As an offshoot of that, the regs were rewritten to allow end dumping of hollow fill. We in industry and we in our company viewed that as a tremendous boost to the industry. We in our West Virginia division have now completed the three end dump valley fills and are in the process of building six other valley fills.

Now these are tremendously large fills in excess of 10 million yards of material in each fill. So we are looking at this, about a 30-percent saving over the conventional method. So this is a tremendous cost advantage to being able to do this.

The reason I bring this up, OSM now is trying to propose that the regulations will be changed to require 20 percent of the material that is not durable rock to pass a certain size requirement. They are bringing forth engineering data that says that lends to the stability of the fill. Sir, we built three of these things. We have six others going in. I have seen 50 or 60 around West Virginia, Ohio, Kentucky. The fills that are being built now are stable, they are safe. We don't need an additional modification to that rule. That is the kind of thing that adds to the cost. If it were to eliminate our ability to use that hollow fill, then we are back to where we were in 1979, 1980, $3-a-ton increase. We can't afford that in today's marketplace.

[The prepared statement of Mr. Goad follows:]

STATEMENT

Paul F. Goad, Jr.
Senior Vice President Operations
Ashland Coal, Inc.
Huntington, West Virginia

Representing
the
Mining and Reclamation Council of America

before the
Subcommittee on Energy and Mineral Resources
of the
Senate Committee on Energy and Natural Resources

Richlands, Virginia

April 18, 1984

Good morning. My name is Paul F. Goad, Jr. I am Senior Vice President of Operations for Ashland Coal, Inc. Ashland Coal is a substantial coal producer headquartered in Huntington, West Virginia, with surface mining operations in eastern Kentucky and southern West Virginia.

Our company produces low sulfur steam coal which is sold both domestically and internationally. This market is a highly competitive one. It is a market in which the participants cannot afford any unnecessary added costs. This is especially true in the export market where the United States is in competition with countries that can deliver a ton of coal in Europe for less than we can mine it in this country.

It is to some of these added costs that I wish to address my remarks today. Specifically, I wish to discuss the disposal of excess spoil and the highwall elimination requirements. Operationally, these two areas are the most costly aspects of surface mining in steep slope regions.

Let us first consider the requirements relative to the disposal of excess spoil. In Appalachia, mine spoils in excess of the volume necessary to backfill and reclaim the mining bench, are placed in fills located near the mining area. These fills, aptly termed head-of-hollow fills for smaller fills and valley fills for larger structures, are perhaps the most visible aspects of modern surface mining operations. In its initial regulatory program, the Federal Office of Surface Mining (OSM) developed rules which not only governed the final configuration and stability of the fills, but also dictated the methods to be employed by an operator in constructing a head-of-hollow or valley fill.

The conventional method to be used in constructing fills was modeled after a method of fill construction used in West Virginia. This method consisted of placement of large rocks to form a drainway from the bottom or toe of the fill to its upper limits. The spoil was then to be transported to the toe of the fill and compacted in vertical lifts of a specified height (the initial regulations required 18-inch lifts later changed to 4-foot lifts). While this method was effective in terms of resulting in a stable structure capable of safely passing surface run-off from the mine and the fill, it was criticized by many experts as being over-designed and excessively expensive to construct.

In the regulations for the permanent regulatory program published in March 1979, OSM responded to the critics of the fill regulations by proposing an alternative method of fill construction known as the durable rock fill (see 44FR 15407-15408 and 44FR 30610-30634). The durable rock fill method allowed an operator to construct the fill by end-dumping or side-dumping fill material into the fill if the material used met certain criteria. Essentially, those criteria were that the fill materials were 80% by volume hard rock and the rock would not slake as determined using the slake index and the slake durability test. By using this method fill materials are naturally separated by gravity with the larger rocky materials settling to the core of the fill.

The durable rock fill regulations were the subject of an interpretative rule published by OSM in the Federal Register April 16, 1980. This interpretative rule, which was challenged in court by the AMC/NCA Joint Committee on Surface Mining Regulations and later withdrawn by OSM, imposed an additional requirement that no more than 20% of the material used for the fill construction could pass through a No. 4 (1/4 inch) sieve. This requirement would have effectively voided the alternative method due to tne lack of a practical means of determining if all of the fill material could meet these criteria.

In the period since the durable rock method of fill construction was adopted as an alternative method, Ashland Coal, Inc.'s mining subsidiary in West Virginia, Hobet Mining & Construction Co., has built three durable rock fills with another six either under construction or in the developmental phases. The geology of southern West Virginia, eastern Kentucky, and western Virginia is ideally suited for this type of head-of-hollow fill and valley fill. Currently the state of West Virginia has approved more than 20 such structures with over 200 in Kentucky and 29 in Virginia. To date there is no evidence of any significant safety or stability problems with any of these durable rock fills.

The importance of the durable rock alternative becomes graphically evident when costs are compared for conventional versus durable rock fills. Such a comparison was performed in the National Research Council of the National Academy of Science study entitled Disposal of Excess Spoil from Coal Mining and the Surface Mining Control and Reclamation Act of 1977, commonly referred to as the CODES study. According to 1980 data supplied by Ashland Coal, Inc. for this study, the durable rock fill achieved the same standards of performance as a conventional fill with a savings of 30% of the cost of the conventional fill. In 1983 dollars this equates to a savings of 2.3 million dollars for a single valley fill.

Another way of comparing the impact of these two methods of fill construction is to express the costs in terms of added costs per ton of coal mined. In a presentation given at the Pikeville Area Coal Exhibition in May 1983, a Lexington, Kentucky engineering firm presented an actual case study showing an added cost of up to $5.00 per ton of coal. This estimate compares well with cost data I developed in 1979 shortly after OSM implemented its initial regulatory program. In my analysis, which was based on actual experience with steep slope mining, I estimated costs of up to $3.00 per ton of coal which were attributable to the excess spoil disposal requirements.

In today's highly competitive world market the U.S. coal industry cannot afford such unnecessary added costs. This is especially true for Appalachian coal operations who are competing for European coal markets with other coal producing countries such as South Africa who can deliver coal in Europe for $33.00, a cost comparable with Appalachian producers' mining costs.

With such compelling evidence supporting the durable rock fill regulations that have been functioning well for years, it is difficult to understand why OSM chose to amend this regulation as a part of the recent regulatory reform.

It should be noted that this rewritten rule is being challenged by the Mining and Reclamation Council of America (MARC) as a part of the ongoing surface mining litigation. The amended rule implies the imposition of a particle size requirement similar to the one withdrawn by OSM in the form of the earlier interpretative rule.

Coal operators as in any business need to have the freedom to choose how to achieve a desired result. To reiterate one of the major recommendations of the CODES study "the regulatory program should be goal oriented and should adopt certain minimum mandatory performance standards".

Also of special concern to Appalachian coal mining operations is the requirement of return to approximate-original-contour (AOC) and highwall elimination. These requirements have been the focus of criticism from coal operators and land owners in steep slope regions of the country since the passage of P.L. 95-87. The most often expressed opposition to these requirements has been the need for flat land in mountainous areas, greater risk of erosion and land slides, and an "unlawful taking" of private property. Although each of these reasons for opposing the AOC/highwall elimination requirements has merit, there are other very practical yet less widely discussed reasons for opposing these requirements. These reasons are operator safety and the elimination of potential future mining.

The concern of operator safety was addressed as a part of the National Research Council of the National Academy of Science study. This study, entitled Highwall Elimination and Return to Approximate Original Contour as Required in the Surface Mining Control and Reclamation Act of 1977, concluded that while: "It cannot be said at this time that the highwall and AOC requirements of the Act, in and of themselves, have caused more accidents. However, MSHA records indicate that placing fill at the very top of the highwall is said to have contributed to seven fatal accidents." It is also interesting to note that similar concerns over operator safety were expressed by each company submitting data for the CODES study. Long steep truck hauls to transport spoil to the base of fills expose drivers to much more risk than end-dumping or side-dumping maneuvers.

Concerns about worker safety contributed to recommendation No. 3 of the NRC study on highwall elimination. This recommendation allows for retention of a small highwall (approximately 10 feet in height) as a part of a drainage ditch at the top of a backfill. Such a practice would improve worker safety during backfilling and aid in controlling erosion. As this study states: "It is dangerous to have the traffic, equipment, and mine personnel in cramped space to cover that last fraction of the highwall on steep slopes." We should ask if a desire for more esthetically pleasant vistas justifies such risks.

A seldom discussed aspect of highwall elimination in steep slope regions is its impact on possible subsequent mining or second cut contour operations. The requirements to "completely eliminate all highwalls . . ." will result in the effective loss of many of Appalachia's surface mineable reserves due to the inability to remine after a contour operation. Because of the requirement to eliminate the highwall, second cut mining in most cases will be precluded due to the resultant extreme stripping ratio or the overburden-to-coal ratio. This can be demonstrated by taking a typical cross-section of a multi-seam surface mineable reserve (see Attachment A) and imposing a contour cut at an 8:1 ratio which would be economical under current mining methods. As this cut is reclaimed it becomes clear that if one were to attempt to remine at some later date that it would be necessary to mine through all of the previously backfilled material in order to get at the "in place" coal. At a 2:1 slope as is common in Central Appalachia the effective stripping ratio for the second cut becomes 24:1 rather than 14:1 which it would have been had the highwall not been reclaimed. In this example the result is the loss of 31% of the recoverable reserves due to the uneconomical situation created by the backfill.

This is not intended to suggest that highwalls should be left in all cases. Such a practice would be as ill-conceived as the current requirement to eliminate all highwalls entirely. Instead we suggest that this requirement be made more flexible perhaps through an experimental practices permit or similar mechanism. Without this kind of flexibility we run the very real risk of ensuring that most of the remaining strippable reserves in eastern Kentucky, southern West Virginia and western Virginia will soon become inaccessible.

ATTACHMENT A

Assumptions:

Seam Thickness: All splits are 28" or 2.5'

Recovery Rate: 80%

Density: 80 lb. per cu. ft.

Ist Cut: (contour on bottom two splits)

Bench width (1st. split): 140 ft.

Bench Width (2nd. split): 135 ft.

Coal: 275 X 2.5 X 80 X 0.80/2000 = 22 tons/L.F.

Overburden: 140 X 70/54 = 181 BCY/L.F.

Ratio (1st cut) = 8 BCY/ 1 ton or 8:1

2nd cut: (contour on all splits)

Bench width (all splits): 80 ft.

Recovery Rate : 80%

Density: 80 lb. per cu. ft.

Coal: 3 X 80 X 2.5 X 80 X 0.80/2000 = 19 tons/L.F.

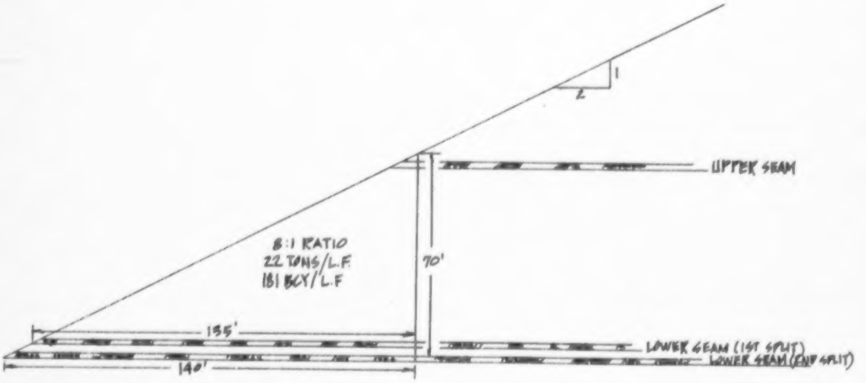
Overburden: (70 X 80)/27 + (80 X 40)/54 = 267 BCY/L.F.

Ratio (2nd. cut): 14 BCY/1 ton or 14:1

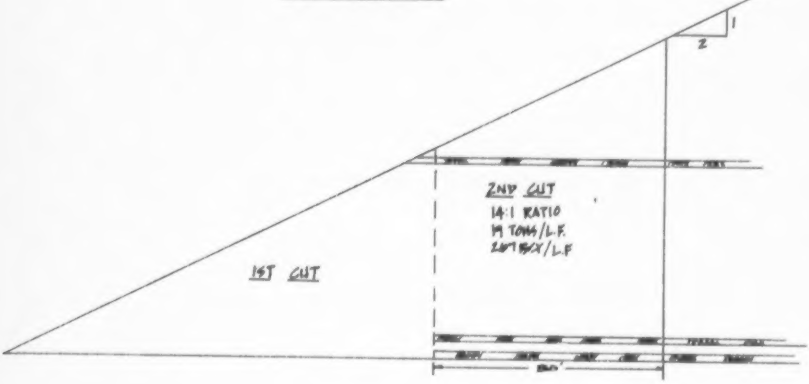
Assuming 1st cut is backfilled: calculate ratio of 2nd cut.

181 + 267/19 = 24 BCY/1 ton or 24:1

Impossible to take a second cut at 14:1 ratio.



SECTION (1ST CUT)



SECTION (2ND CUT)

Senator WARNER. All right, sir. I see your point. You may provide for the record those additional points. I appreciate your cooperation and the cooperation of all members of the panel for their fairness and objectivity, and doing the best you can in approaching this subject. Thank you, gentlemen.

We will now hear from Mr. Carl Curtis, president of the American Mining Reclamation Professionals.

Mr. Curtis, thank you for joining us today.

STATEMENT OF F. CARL CURTIS, PRESIDENT, ASSOCIATION OF MINING AND RECLAMATION PROFESSIONALS, WISE, VA

Mr. CURTIS. Thank you for the opportunity.

I would like to make a correction. In our title, we are the Association of Mining and Reclamation Professionals.

Senator WARNER. All right.

Mr. CURTIS. The Association of Mining and Reclamation Professionals was incorporated in Virginia in 1981 and we are professional people from New York, West Virginia, Kentucky, Virginia, and Tennessee. We are a professional group of individuals who promote and support the principles of good engineering, technical, and scientific practice as applied to design, planning, and permit acquisition for the coal industry.

We also analyze regulatory requirements for technical, scientific, and/or practical soundness, and promote modification of those requirements found to be technically or economically unsound or unjustifiable, whatever.

My comments will, I will do a cursory review of my comments. You have been provided with a copy.

Senator WARNER. It seems you have done a very thorough and careful review of a number of subjects. If you could touch on those that you feel have not been discussed thus far, ones in which you have a particular emphasis that you want to add, we will carefully analyze your report.

Mr. CURTIS. Thank you. First, as to AOC, and much of what has been said is included. I would like to reiterate that valuable reserves are lost from reclaiming highwalls to approximate original contour, and with the total highwall elimination clause in the regulations it makes it very difficult to achieve.

As Mr. Brown stated, it is hard to gain the last 5 or 10 feet of reclamation at the top of a highwall, and it is also very dangerous. We would much rather see some modification to this. People are forced to put drill rigs on top of the highwall to shave and blast off. We feel that this is a product of the regulation, very dangerous to the industry.

Senator WARNER. Do you consider the environmental concerns in your assessments?

Mr. CURTIS. Yes, we do.

Senator WARNER. So from an environmental standpoint, do you think that it can be said that to try and restore to 100 percent is an unwise thing?

Mr. CURTIS. In certain areas we agree with that. In the process of reclaiming the highwalls you are faced with controlling erosion and excessive runoff, and unless the highwalls are reclaimed in a proper manner, you can have slippage of those highwalls through drainage penetrating below and creating a friction factor there that will allow that material to slide off the bench. If you don't provide drainways for those areas, you will have a problem. It is very important to seed those areas quickly, to prevent the erosion, get some vegetation on them. No matter how hard you try to put those walls back, you are still going to incur 4 or 5 feet of settling at the top, so you actually never have a total highwall elimination.

Senator WARNER. Over a period of time?

Mr. CURTIS. Over a period of time.

Senator WARNER. Thank you.

Mr. CURTIS. With the AOC, we feel like valuable land is lost in southwest Virginia and it is level or rolling land which is a valuable commodity to us. We have lots of mountains. We can't eat those mountains. We have to live in them. It is hard to farm on mountainsides, and we would really like to see some modification to the rewrite of the AOC.

My comments address that a little further.

I would like to incorporate the NAS report in this record. We concur with their findings.

Senator WARNER. All of your findings or have you had a chance to look it over?

Mr. CURTIS. All of their findings.

My second comments address the ground water monitoring program. As you know, the mining occurs in a variety of States across the United States and it has a very regional difference. What is good for ground water monitoring in the West is not really applicable to what we have here in southwest Virginia. We would like to see some reduction in the frequency of ground water monitoring.

We have put hundreds of holes down to monitor ground water and the findings have not been conclusive. We possess purged aquifers. We do not have the sunken river beds of the West. It is a very expensive proposition to drill a hole that can cost $10 or $12 a foot to put a hole down and then you are plagued with the continuous monitoring of that hole for the life of the permit, or unless you can obtain a variance not to monitor. But you are still going to have to gather your baseline data.

We would like a consideration in the frequency and regional differences in ground water monitoring regulations.

Along those same lines, we feel that a lot of mining that has occurred in the past has probably done whatever damage it's going to do to the aquifers around here and any additional mining is not really going to have that much impact on above drainage coal. We feel that through sound mining techniques, southwest Virginia, West Virginia, Kentucky coal can be mined with the reduction in the ground water monitoring. It appears we can never drill enough holes to find conclusive data to tell people what they want to know on that.

My next comment addresses the 2 acres. We support the 2-acre operators and the 2-acre regulations. We feel that Virginia has done a good job in promulgating regulations with due control of 2-acre operations. We feel that OSM by their definition of affected area, physically related areas and control has done away with the 2-acre operator by definition. We feel that there are small blocks of coal in the coalfields which can only be mined by the 2-acre operator because of the economics. A large company will not invest the time and effort to permit an area for a short-lived mine site . Therefore, it falls on the small operator to pick these mine sites up and he will employ maybe 20 or 40 personnel to run that mine, or he may employ 10 or 15, but it is an additional employment to the industry.

The point is that the regulations require that you maximize recovery of the reserves and that is what the 2-acre operator does. They are controlled by regulations. And it concerns us that they do a good job, the division does a good job of controlling them.

We feel that the 2-acre operator should no longer be classified as 100,000 tons or less, that he should be raised to 250,000 tons.

Senator WARNER. Yes, that point has been made.

Mr. CURTIS. As was said, the market today requires that kind of tonnage to be produced.

Senator WARNER. If you are able to get the capital to put in the overhead equipment.

Mr. CURTIS. That is correct.

My next comment addresses experimental practices. We support this wholeheartedly. However, it is so expensive to qualify for experimental practices through the operator that it is almost an unattainable goal for him unless funding is provided through some agency. Now in Virginia we have one operator who has qualified for experimental practices. The only way he is able to do that was with the assistance of a large company and with the help of VPI doing the monitoring and reporting those findings to the industry.

We would advocate some sort of funding be presented for experimental practices, whether it is through a university group which would be an obvious organization to handle that, they are capable of doing it, or funding a large coal company that can show the expertise in that.

The AML program has been that operators pay 35 cents per ton for surface coal and 15 cents a ton for deep coal. The life of this program is for 15 years, and within this timeframe I believe orphan land was supposed to be reclaimed through this funding. We would like to see the 50/50 split of moneys be placed more on a local basis to a 25/75 split, put it on the local State level and allow them to take care of the reclamation. We feel that the State can handle their own house better than the Government, the Federal Government can.

[The prepared statement of Mr. Curtis follows:]

MINING

Public Oversight Hearing
on
"The Implementation of the Surface Mining
Control and Reclamation Act of 1977
in the Appalachian Coal Region"

Presented to

Senate Subcommittee on Energy and
Mineral Resources of the Committee
on Energy and Natural Resources

Presented by

Association of Mining and Reclamation Professionals

April 18, 1984

MINING

April 18, 1984

United States Senate
Committee on Energy and Natural Resources
Washington, D.C. 20510

Attention: Senator John W. Warner, Chairman

RE: Public Oversight Hearing
April 18, 1984, Southwest
Virginia Community College

Mr. Chairman and Members of the Subcommittee:

The Association of Mining and Reclamation Professionals was incorporated in Virginia in 1981 as a nonprofit organization. The membership is comprised of individuals who are professionally involved in some aspect of mining, i.e. Agronomists, Attorneys, Botonists, Civil Engineers, Draftpersons, Engineering Technicians, Environmental Engineers, Foresters, Geologists, Geotechnical Engineers, Geohydrological Engineers, Hydrologists, Mining Engineers, Mine Operators, Plant Ecologists, Physicists, Soil Scientists, Structural Engineers, Surveyors, and Wildlife Biologists.

We are a professional group of individuals who promote the following principles:

I. To support principles of good engineering, technical, and scientific practice as applied to design, planning, and permit acquisition for the coal industry.

II. To further communication and technology transfer by providing a medium of information exchange among industry, consulting, and agency personnel.

III. To analyze regulatory requirements for technical, scientific, and/or pratical soundness, and to promote modification of those requirements found to be technically or economically unsound or unjustifiable.

IV. To formulate and promote techniques by which the process of permit acquisition may be expedited.

V. To provide a vehicle by which the general public may be informed of technical, environmental, and economic considerations related to coal production.

United States Senate
Attn: Senator John W. Warner
April 18, 1984
Page 2

We feel very qualified to present the enclosed comments and trust you will take them seriously. It is true we derive our incomes from working in the coal industry but we are also charged with protecting the environment and advocate good mining practices and safety in the industry. Our membership has invested personal time and effort in the comments and hope they will not go unheard.

It is our intention to present for your consideration comments concerning the following topics.

A. Approximate Original Contour (A.O.C.) Reclamation

B. Groundwater Monitoring

C. Two Acre Mine Sites

D. Experimental Practices

E. Abandoned Mined Lands (AML) Program

F. O.S.M. Involvement

AMRP has addressed but a few of the areas in which improvement is a must. Our comments are not technically written but do address issues which might require some technical expertise to understand total depth or impact. When actual revisions are drafted to the regulations, the membership of A.M.R.P. would like to input information on a more technical level.

We appreciate this opportunity to make comments before this subcommittee and look forward to working with you or your representatives in the near future.

With kindest regards,

F Carl Curtis

F. Carl Curtis
President

FCC/lo

SECTION 1

APPROXIMATE ORIGINAL CONTOUR

COMMENTS

SECTION OUTLINE

Comments for Modification of A.O.C.

Typical Section

Approximate Original Contour

Economic Considerations

Regulatory Considerations

    Roads and Ditches

    Slope Stability of Spoil Backfill

    Complete Highwall Elimination

Socio-Economic Considerations

Conclusions and Recommendations

Exhibits

    Sketch A

    Sketch B

    Table 1

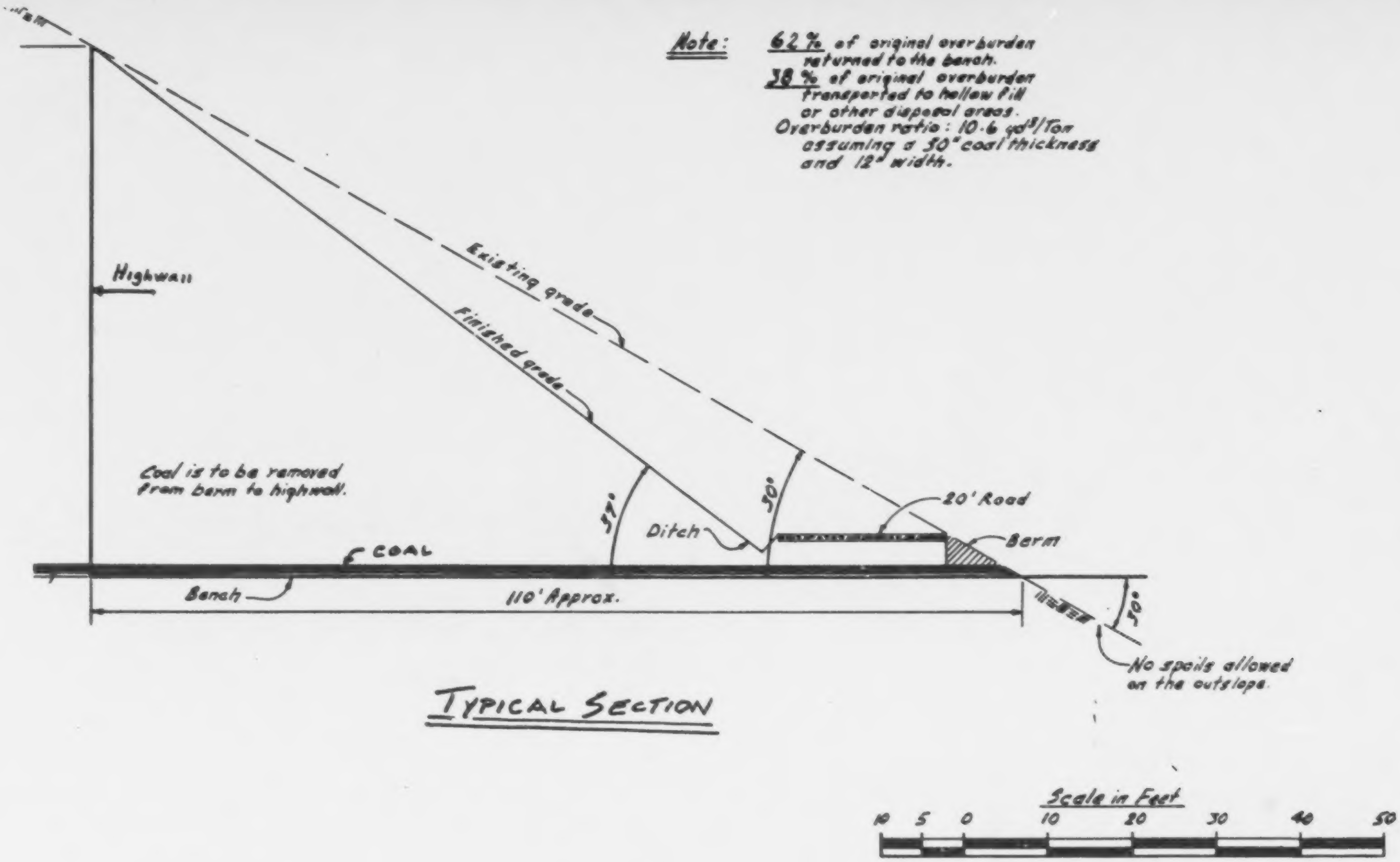
    Table 2

COMMENTS FOR MODIFICATION OF A.O.C.

One of the most costly provisions of Public Law 95-87 to the coal industry of Southwest Virginia was Section 515 (b)(3) of the Federal Surface Mining Control and Reclamation Act - restoration to Approximate Original Contour (AOC) or total elimination of highwalls. The concept of restoring mined areas back to approximate original contour is acceptable, however, the regulations are written in such a manner as to leave no latitude for exceptions. Enclosed in this section are Exhibits A, B, C, and D which demonstrate both technical and actual needs for reconsidering a major rewrite of Section 515 (b)(3). Other organizations have been addressing the issue of A.O.C. since the act was adopted. The National Academy of Sciences has recently issued a report which is technically sound and reiterates what industry has been contending all along - More flexibility is needed.

Southwest Virginia, Southern West Virginia, and Eastern Kentucky poses steep slopes, i.e. 25° or better. Under the current regulations large portions of the remaining coal reserves are rendered unmineable because A.O.C. cannot be achieved with total highwall elimination. In other areas coal reserves which could be second, third, or fourth cut mining are backfilled to an extent where it will not be economically feasible to remine because of the cost of removing overburden.

Under the AOC regulations a land owner has no choice in how his land is to be regraded. If the land owner intended to develop a farm, industrial site or even a recreational facility he would have to wait until the bond was released (five years) on the mined area and then go back and remove the material which had been used to reclaim the highwall. Level or rolling land is a rare commodity in the Virginia and Kentucky coal fields. Real estate which is developable for industrial or residential purposes can sell for $10,000 to $20,000 per acre conservatively. If utilities are accessable, prices are much higher. Undeveloped mountain land which might be suitable for residential purposes will range between $100 to $400 per acre surface only.


Note:
62 % of original overburden returned to the bench.
38 % of original overburden transported to hollow fill or other disposal areas.
Overburden ratio: 10.6 yd³/Ton assuming a 30" coal thickness and 12" width.
Highwall
Existing grade
Finished grade
Coal is to be removed from berm to highwall.
37°
30°
Ditch
20' Road
Berm
℄ COAL
Bench
110' Approx.
30°
No spoils allowed on the outslope.
Scale in Feet
10
5
0
10
20
30
40
50

TYPICAL SECTION

APPROXIMATE ORIGINAL CONTOUR

Probably the single most devastating mandate of PL95-87 is the requirement that mining areas be returned to their premining condition or AOC. In the gently rolling terrain of Pennsylvania or Indiana or the flat coal lands of the West, the AOC requirement presents no great problem. In the steep-mountainous terrain of Southwest Virginia, Eastern Kentucky, and West Virginia, however, the AOC requirement has been a major factor in causing enormous economic hardship to the coal industry and therefore to the overall economy of those areas.

The steep slopes of the area make return to AOC on contour jobs very expensive and, in steeper areas where roads and diversion ditches are required on the outer edge of the bench, physically impossible.

ECONOMIC CONSIDERATIONS

In the mining industry, as with most other industries, economics is the deciding factor in how the industry functions. The objective is to maximize resource recovery in an economically feasible manner. In evaluating the maximum cut width and highwall height that can be economically taken, overburden ratios are developed. This is a ratio of the cubic yards of overburden material, in-place, that must be moved to recover one ton of coal. Based on current conditions it is felt that an overburden ratio of 13 to 1 is probably the maximum ratio at which most operators can profitably run. For example, if evaluations show that the overburden material on a 13 to 1 OB ratio job can be handled (through reclamation) for approximately $1.50 epr BCY (Bank Cubic Yard - inplace) then the approximate cost per ton of coal recovered would be $19.50 (13 BCY x $1.50/BCY). Based on the quality of coal and the current market conditions the approximate profit margin can be developed. For example, if the coal mined at $1.50 per BCY sells for $22 per ton, then the estimated profit is $2.50 per ton or roughly 12.8 percent (2.50/19.50).

The explanations and examples above are certainly over simplified but are the basis for nearly all surface mining economic evaluations. It is important to understand the concept of overburden ratios in reviewing the other factors affecting AOC.

REGULATORY CONSIDERATIONS

While it is true that the overburden ratios discussed above determine the maximum cut width and highwall height that can be taken on an economic basis, there are also regulatory considerations that must be considered. The three items to be considered are: access and drainage control (roads & ditches), complete highwall elimination (AOC), and slope stability of the backfill material (static safety factor).

Roads and Ditches: On the contour operations which are most common to the Appalachian area, suitable access must be maintained through the entire mining area. This is done by location of an access and/or haulroad most often located at or near the edge of the bench. Along with the road is a system of ditches that control drainage from the road and from the backfilled areas above the road. These ditches convey surface drainage in a controlled manner to appropriate sediment control structures (ponds, sumps, channels, etc.) located throughout the permitted mining area (See Sketch A and Sketch B).

The minimum distance required for a road, ditch, and also on undisturbed outcrop barrier would be roughly 30 feet. In steep areas where bench width is critical, this would reduce the backfill area by the 30 feet required for barrier, road, and ditch. In an area with an original ground slope of 32° the loss of 30 feet means that, to eliminate the highwall completely, the backfilled material must be stacked at an angle of roughly 38° (See Sketch A). In most all cases this is well over the maximum angle allowed to achieve the 1.3 static safety factor for backfilled spoil. However, in most all cases it is a must that a road and ditch system be left on the outer edge of the bench.

Slope Stability of Spoil Backfill: As noted above it is required in the regulations that backfilled spoil material achieve a 1.3 static safety factor. This static safety factor is based on the angle at which the backfilled spoil is stacked, the heights of the highwall backfilled, and the strength parameters of the backfill material itself.

Strength parameters must be obtained by laboratory analysis for each individual mining site. Accepted concervative values are used for example evaluations. In most cases it is felt better results (higher static safety factors) could be obtained using actual tested values.

Table 1 shows the different values that are obtained when a 12.8 to 1.0 overburden ratio, which yields an 80 ft. highwall, is taken over a range or original slopes. This table shows the cut width taken less the 30 ft. for road and ditch (which is available for backfilling), the approximate angle at which the backfill material must be stacked to completely eliminate the highwall, and whether the 1.3 minimum static safety factor is met.

From the table it can be seen that at a 26° original slope a static safety factor of roughly 1.3 is obtainable. Therefore, at original slopes greater than 26° the static safety factor of 1.3 is unattainable.

Table 1 also shows the maximum angle at which the highwall can be backfilled and still obtain the 1.3 static safety factor, as well as, the highwall that is reclaimed and unreclaimed in each case.

From table 1 it is also seen that varying amounts of highwall ranging from 2 ft. to 29 ft. are left unreclaimed under the given conditions. At a backfill angle of 30° the maximum amount of highwall is reclaimed and the static safety factor of 1.3 is met. At lesser backfill angles the static safety factor of 1.3 is met but less highwall is reclaimed. At larger backfill angles more highwall is reclaimed but the static safety factor of 1.3 is not obtained.

Table 2 shows the effect of reducing the highwall taken. Under the same conditions when a 60 ft. highwall is taken rather than an 80 ft. highwall the static safety factor of 1.3 is obtained at roughly a 27° original slope. In order to meet the 1.3 safety factor at greater original slopes, highwall heights of from 3' to 17' must be left unreclaimed. Also by reducing the highwall height taken the overburden ratio is reduced to about 9.4 to 1.0. This is less than to optimum recovery ratio of 13 to 1 and therefore fails to maximize coal recovery.

Complete Highwall Elimination: This consideration was generally covered in the discussion of the slope stability of the backfill. From tables 1 and 2 it can be seen that at certain steep original slopes it is not possible to completely eliminate the highwall and obtain the required 1.3 safety factor. Under current regulations, those areas would be classified as unmineable and thus countless tons of valuable reserves would fail to be recovered.

Even in the areas where complete highwall elimination and obtaining the 1.3 safety factor is possible, a major problem exists in reclaiming the last 15' to 20' of highwall. This is caused basically by lack of sufficient room to efficiently work machinery. As the highwall is reclaimed, the bench width narrows according to the regraded slope. Also specialized equipment may be needed to safely reclaim these last few feet of highwall, thus resulting in higher costs. It is felt a minimum of 25' of bench width is needed to operate modern equipment safely and efficiently. If the highwall could be reclaimed until a final top bench width of 25' is achieved costs could be reduced significantly. This reduction in operating, costs could be reduced significantly. This reduction in operating costs could mean that even higher overburden ratios could be taken. Therefore, additional reserves would be recovered that are currently unrecoverable for economic reasons. Maximizing resource recovery during current operations is of vital concern since once AOC in an area is achieved that it will essentially assure that additional future cuts will not be taken on in that area. When economic conditions change such that it would be cost effective to take additional cuts, there will be the added cost of removing the backfilled AOC material. This will likely render the area unmineable in the future for all pratical purposes.

The remaining highwall could be "effectively" reclaimed for asthetic purposes by using small terraces and/or "showing" the highwall trees to screen the highwall from the sight. The remaining small top bench would be ideal for wildlife enhancement. By selectively choosing the proper evergreen tree species, it is felt that by the end of the 5 year bond period that the remaining highwall would be substantially concealed by the trees. See Sketch A and Sketch B.

SOCIO-ECONOMIC CONSIDERATIONS

There has been no consideration as to the long term socio-economic effects of AOC. In an area where level land is a valuable commodity, it seems grossly counterproductive to require that steep slopes be put back to their original grade after mining and most often contrary to the wishes of the property owner. As long as no coal is removed, highwalls can be left, i.e. road cuts, quarries, construction sites, and development areas. The fact is that, in most cases, the land can be better used when left flat and highwalls unreclaimed. Some of the finest commercial, residential, and pasture property in the region is a result of mining methods that could not have taken place under PL95-87 simply because AOC was not achieved and/or highwalls were not completely eliminated. The material not used in the "productive" reclamation of those pre-PL95-87 mined areas was put in excess spoil disposal areas such as hollow fills to create additional level property. A similar situation can occur today without material being placed on the downslope area.

There are three very basic resources common to coal country - the people, the land, and the coal. Presently, the coal development supports the people. It is estimated that for each job that is directly related to the mining industry, four other "indirect" or support jobs are generated.

When the coal resources have been depleted, the land must support the people if the area is to survive. The land must be put into a condition that can maximize its potential use. Simple logic tells you that flat land, whether it be benches, hollow fill area, or mountaintop areas, certainly has more potential for use than mountain side slopes of 25 to 35 degrees.

It appears appropriate that studies be undertaken to evaluate the potential long range socio-economic effects of AOC.

CONCLUSIONS AND RECOMMENDATIONS

Prior to PL95-87 economics was the primary consideration in determining cut widths and highwall heights. The steepness of the original slopes were of little concern since highwalls were usually left unreclaimed and backfilling operations consisted of basically leveling the cut area with material suitable to support vegetation. Now by the regulations developed under PL95-87, economics is no longer the major consideration in determining the maximum cut width and highwall height that can be taken. Complete highwall elimination is required as is a static safety factor of 1.3 for the spoil material backfilled against the highwall.

For typical spoil strength parameters on natural slopes generally 27° or less, the required static safety factor can be achieved, the highwall can be completely eliminated, and the maximum economically feasible cut and highwall are taken resulting in maximum resource recovery. Generally on natural slopes greater than 27° the consideration of economics (maximum resource recovery), static safety factor, and complete highwall elimination are in conflict. This results in a "catch 22" situation where one or possibly two of the considerations are fulfilled, but not all. In such cases since static safety factor and complete highwall elimination are required by the regulations and maximum resource recovery is only "suggested" or "implied" the result is either valuable reserves and not recovered to the extent economically feasible or the area is rendered effectively unmineable.

In areas where accepted engineering evaluations show that total highwall elimination is unattainable at the required static safety factor, consideration of a waiver from total highwall elimination should be made. The technicalities of such a waiver would certainly require careful study, but should consider backfill stability, maximum resource recovery, surface drainage control, and alternative methods of "screening" the unreclaimed highwall. This could also result in reduced mining costs which in turn could result in additional resource recovery.

There has been little consideration as to the long term effects of AOC or total highwalls are reclaimed primarily for asthetic reasons and usually contrary to the landowners wishes. It is felt that more productive and environmentally acceptable reclamation alternatives that allow partial highwall eliminations can be developed and also that highwalls can be left in an environmentally and asthetically acceptable manner.

It is suggested that an evaluation of the long term socio-economic effects of AOC undertaken that considers among other things; future land use needs and regional post mining (after reserves depletion) economy and industry.

TABLE 1

ORIGINAL SLOPE	HIGHWALL* HEIGHT	CUT WIDTH**** (LESS 30')	REGRADE ANGLE REQ'D FOR TOTAL HW. ELIMINATION	STATIC SAFETY	BACKFILL ANGLE	HW. RE-CLAIMED	HW. UN-RECLAIMED
(DEGREES)	(FT)	(FT)	(DEGREES)		(DEGREES)	(FT)	(FT)
20	80	190	21.5	1.3	21.5	80	-0-
23	80	158	25.4	1.3	25.4	80	-0-
25	80	142	27.8	1.3	27.8	80	-0-
26	80	134	29.2	1.3	29.2	80	-0-
27	80	127	30.5	1.3	30	78	2
28	80	121	31.8	1.3	30	75	5
30	80	109	34.5	1.3	30	68	12
32	80	98	37.4	1.3	30	62	18
34	80	89	40.1	1.3	30	56	24
36	80	80	43.1	1.3	30	51	29

* Results in an overburden ratio of (36" coal & 90% recovery)
** Using: C=200 psf o=30° = 125 pcf o=0 (huange method)
*** Maximum angle at which 1.3 static safety factor can be achieved
**** Less 30' for road & ditch

TABLE 2

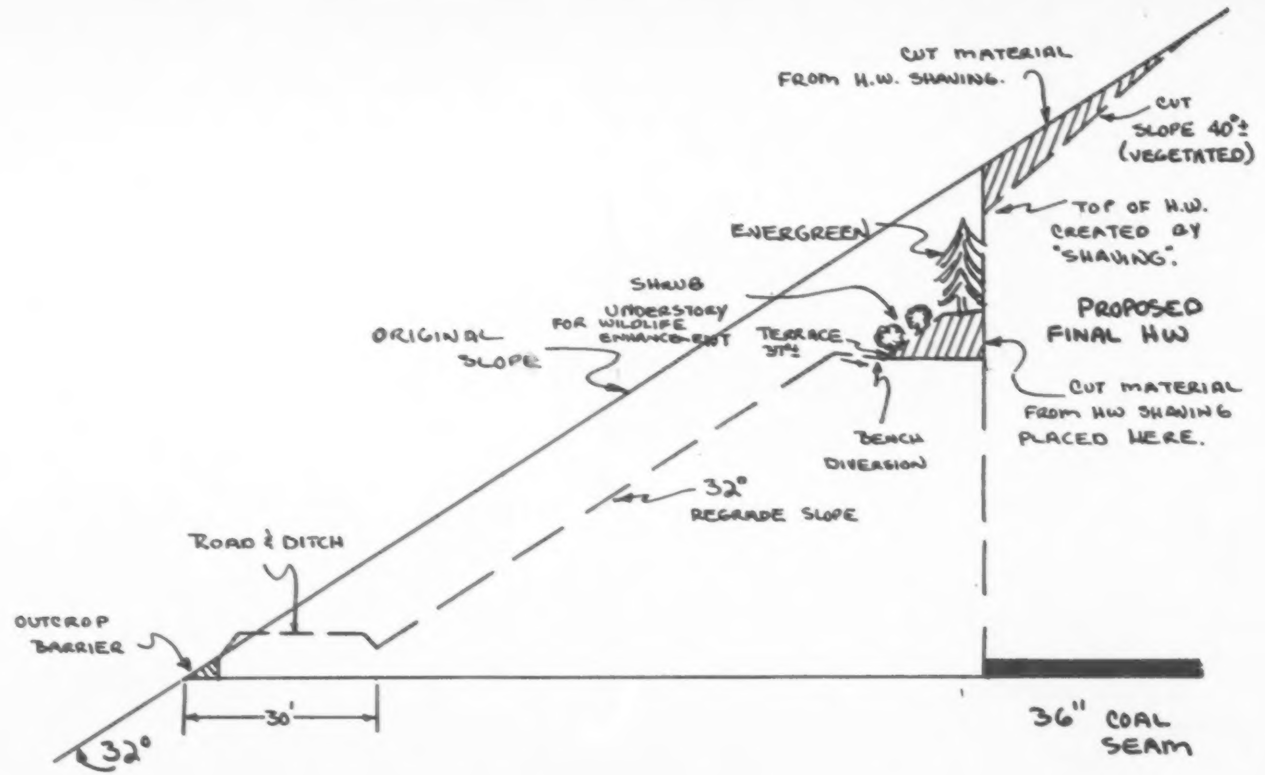
ORIGINAL SLOPE (DEGREES)	HIGHWALL* HEIGHT (FT)	CUT WIDTH**** (LESS 30') (FT)	REGRADE ANGLE REQ'D FOR TOTAL HW. ELIMINATION (DEGREES)	STATIC SAFETY	BACKFILL ANGLE (DEGREES)	HW. RECLAIMED (FT)	HW. UNRECLAIMED (FT)
20	60	135	22.5	1.3	22.2	60	-0-
25	60	99	29.1	1.3	29.1	60	-0-
26	60	93	30.6	1.3	30.6	60	-0-
27	60	88	32.0	1.3	32.0	60	-0-
28	60	83	33.5	1.3	32.0	57	3
30	60	74	36.6	1.3	32.0	51	9
32	60	66	39.8	1.3	34.0	50	10
34	60	59	43.0	1.3	36.0	48	12
36	60	53	46.0	1.3	36.0	43	17

* Results in an overburden ratio of (36" coal & 90% recovery)

** Using: C=200 psf o=30° = 125 pcf o=0 (huange method)

*** Maximum angle at which 1.3 static safety factor can be achieved

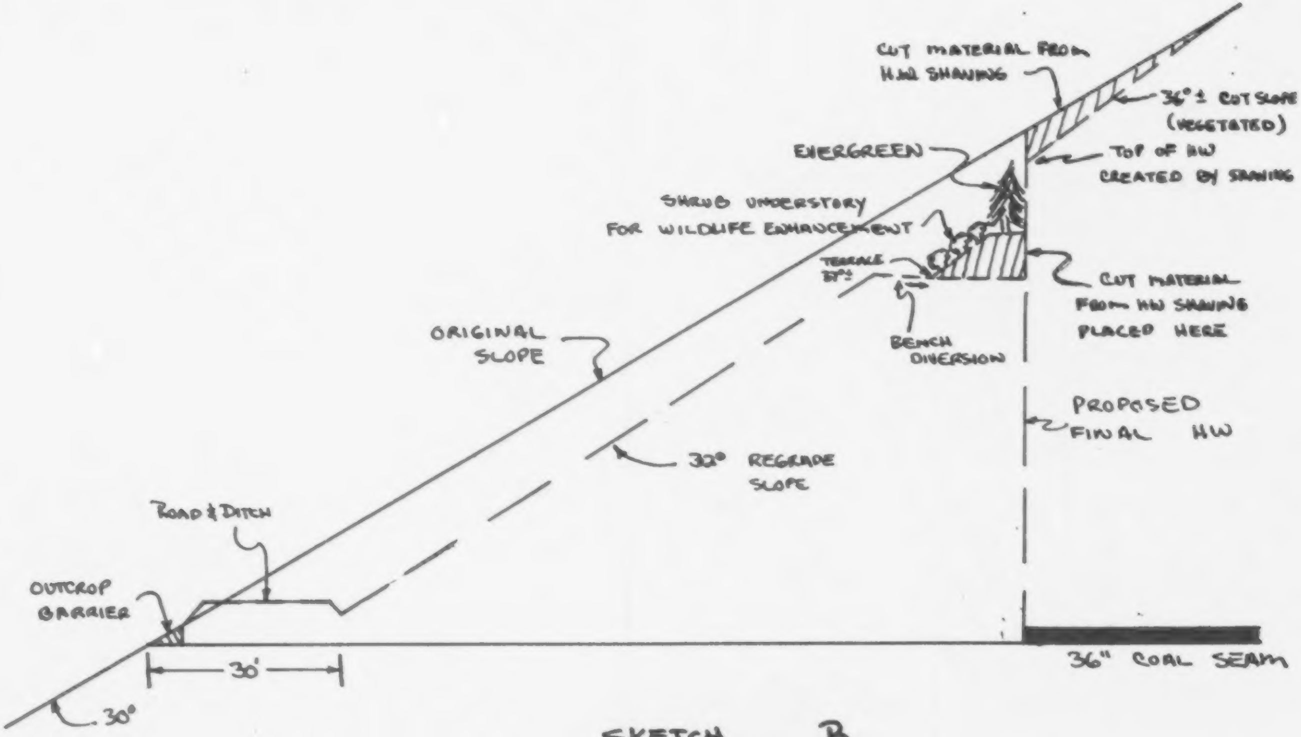
**** Less 30' for road & ditch



SKETCH A

SCALE: 1" = 20'

OB RATIO: 12.8 to 1



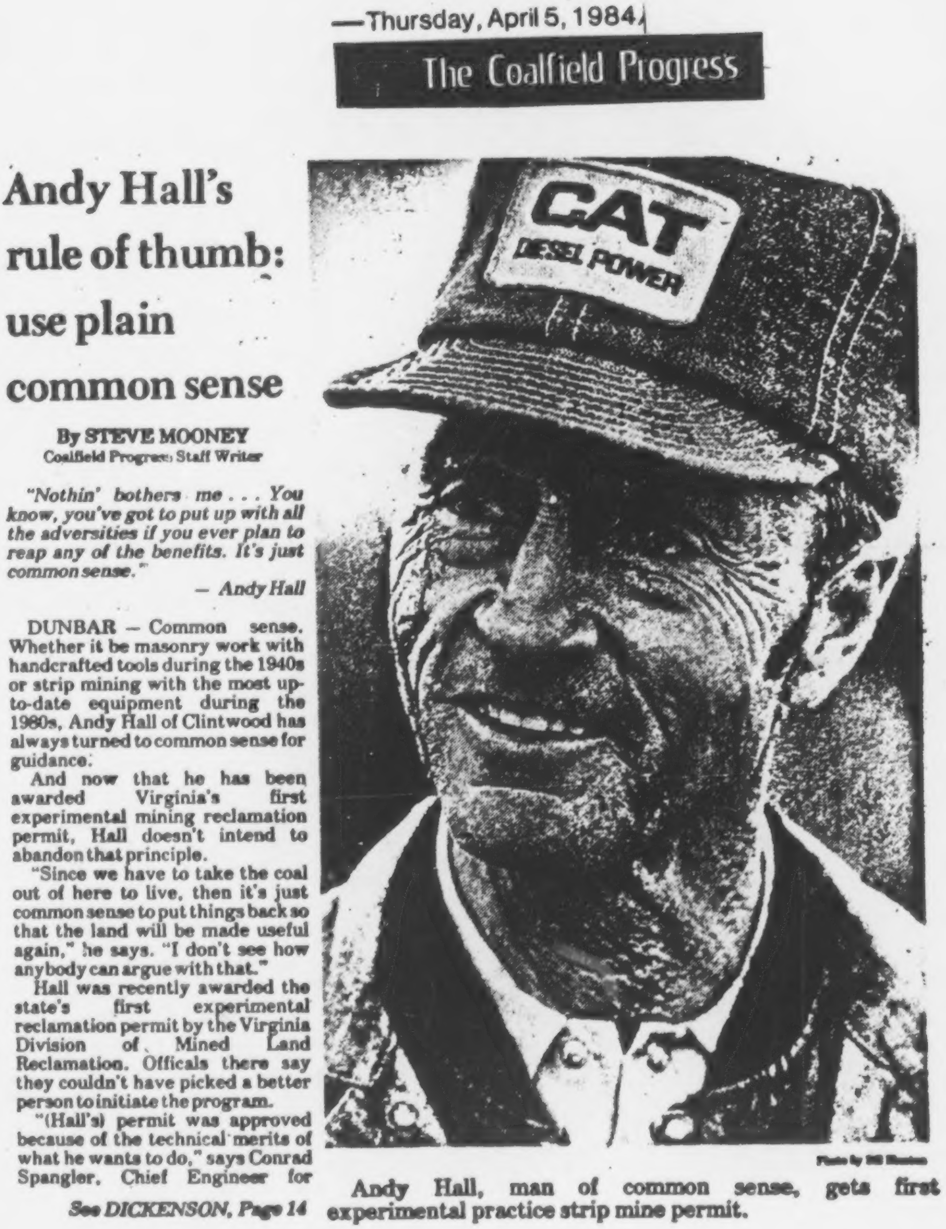
SKETCH B

SCALE: 1" = 20'

OB RATIO: 12.8 to 1

EXHIBITS

EXHIBIT A



—Thursday, April 5, 1984

The Coalfield Progress

Andy Hall's rule of thumb: use plain common sense

By STEVE MOONEY
Coalfield Progress Staff Writer

"Nothin' bothers me . . . You know, you've got to put up with all the adversities if you ever plan to reap any of the benefits. It's just common sense."

— Andy Hall

DUNBAR – Common sense. Whether it be masonry work with handcrafted tools during the 1940s or strip mining with the most up-to-date equipment during the 1980s, Andy Hall of Clintwood has always turned to common sense for guidance.

And now that he has been awarded Virginia's first experimental mining reclamation permit, Hall doesn't intend to abandon that principle.

"Since we have to take the coal out of here to live, then it's just common sense to put things back so that the land will be made useful again," he says. "I don't see how anybody can argue with that."

Hall was recently awarded the state's first experimental reclamation permit by the Virginia Division of Mined Land Reclamation. Officals there say they couldn't have picked a better person to initiate the program.

"(Hall's) permit was approved because of the technical merits of what he wants to do," says Conrad Spangler, Chief Engineer for

See DICKENSON, Page 14

Photo by [illegible]

Andy Hall, man of common sense, gets first experimental practice strip mine permit.

Dickenson mine operator combines skill, common sense

DICKENSON, from Page 1

DMLR. "He has a proven record of successful performance in reclamation. I guess we couldn't ask for much more."

According to DMLR officials, an experimental reclamation practice is defined as "... the use of alternative reclamation practices for experimental or research purposes ..."

The techniques used, say the officials, "... need not comply with specific enviromental protection performance standards ...."

However, according to officials from DMLR and the U.S. Interior Department's Office of Surface Mining, the experimental practice must be "... potentially more or at least as enviromentally protective during and after mining and reclamation."

DMLR's present reclamation law requires that strip mined land be returned to its "approximate original contour."

In Hall's case, however, DMLR is willing to allow several exceptions. "The area he's mining is very suitable for experimental practices," says Spangler. "There's a series of ridges and hollows on his site where standard reclamation practices would be difficult to apply. We think his proposition makes all the sense in the world and we're certainly willing to let him give it a try."

Hall is currently mining a 72-acre tract of rugged hillsides and hollows near Dunbar, between Norton and Appalachia. In 1981, he won a DMLR award for reclamation work accomplished at a site just minutes away.

"I wish they would have let me do then what I'm going to do now," he says. "Then I really would have deserved that award."

According to Spangler, Hall's reclamation work at the present site will be termed "experimental" because it incorporates several variations from DMLR's existing strip-mining regulations.

Dickenson mine operator Andy Hall (left) surveys site of future experimental spoil fill; at right is DMLR Chief Engineer Conrad Spangler. Photos by Bill Blanton.

"He's going to delete one large spoil fill, build three smaller ones and then cut off the top of the ridges between them to create several hundred yards of flat land or gently rolling hills," says Spangler. "If he put the ridges back to their original contour as our regulations require, the land probably would be used as unmanaged forest land.

"However, with the variances, the land will be suitable for cattle and other livestock grazing ... there will be a productive use for the land."

Hall puts it this way: "Now doesn't it make more sense to have three or four hundred yards of level land than a bunch of finger ridges.

If this was my land, I know I would want it leveled. I've got an opportunity here to create some highly usable land instead of leaving something that nobody can use. I swear I wish I could have done this years ago."

In addition to creating usable land, Spangler says Hall's experimental reclamation work will provide valuable information for researchers from Virginia Polytechnic Institute and State University as well as Penn-Virginia Corp.'s nearby Powell River Project.

"The first spoil fill will be built exactly to the specifications of existing regulations," says Spangler. "It will be a durable rock fill that consists of 80 percent or more of hard rock. Drainage will be directed around the perimeter of the fill."

The second fill, Spangler says, will be built by the same method as the first, but will utilize different materials and will include a drainage variance.

"A lot of sandstone will be used but some softer materials will also be put into the fill," he says. "The percentage of hard rock usage will drop to about 50 or 60 percent."

Spangler says drainage from the second fill "will be directed through the center of the site instead of by diversion ditches around the perimeter."

According to Spangler, the third fill "will be built exactly like the second one but drainage will be directed around the perimeter.

"By being able to observe three different types of fills on one job, researchers will be able to see which one works best and which one is the most cost-effective," Spangler says. "Andy (Hall) is doing a great service to everybody all the way around."

Spanlger says special monitoring will also be conducted at Hall's mining site.

According to Spangler, Hall will keep daily records of equipment usage as compared to coal production for an economic analysis of the different spoil fill methods.

In addition, VPI will test the properties of the softer materials used in the fills and water quality monitoring will be conducted to check for possible erosion.

Spangler says all this testing will enable researchers to tell "if our design assumptions are actually accomplished in the field.

"The information that is gleaned from this operation will be seriously considered in the writing of future reclamation regulations," says Spangler. "We have to do this type of experimental work first and then consider the results later ... but potentially, because the Office of Surface Mining also has to approve every experimental permit ... this has a national impact."

Spangler urges other strip mine operators to apply for experimental reclamation permits. "We have a very positive attitude towards experimental practices," he says. "They are probably the best way to achieve better reclamation while helping the industry to grow and prosper."

However, Spangler says he intends to make it clear from the beginning that the experimental permits "are not a vehicle for the circumvention of strip mining regulations ... they are intended to and will be used to advance reclamation technology."

Hall agrees that those advances can and should be made.

"The message we (strip mine operators) need to get across is that there's a great difference between what's being done and what can be done to improve strip mined land," he says. "In a couple of years, I hope to have the proof to show that I'm right."

EXHIBIT B

THE IMPACT OF SURFACE MINING AND CONTROL RECLAMATION ACTION OF 1977 ON VIRGINIA COAL

By: **Dennis D. Willis, P.E.**
Thompson & Litton, Inc.

ON AUGUST 3, 1977, President Carter signed into law the Surface Mining and Control Reclamation Act of 1977, Public Law 95-87. This law covers all coal mining, surface operations as well as surface indentures created by underground mining. The law has a very real effect upon one of Virginia's great natural resources and the position of this resource in the competitive market. Subsequent rules promulgated by the law will obviously affect the economy of virtually every citizen of the Commonwealth. Several of the more important aspects of the law are discussed below.

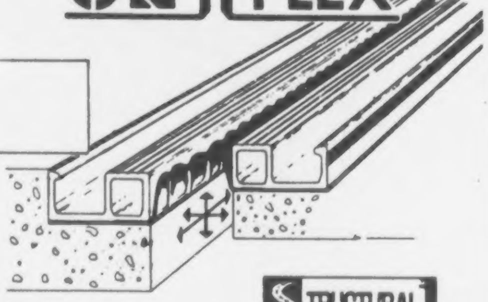
Complete restoration of the highwalls and depressions are conceded to be the most costly factors. Virginia coal is mined in the Appalachian region, an area where the terrain is naturally composed of steep slopes and narrow valleys. According to Kenneth Englund, US Geological Survey, 95 percent of Virginia's recoverable strippable coal reserves are located on slopes steeper than 20 degrees.

Complete restoration as required by the new law is estimated to increase the price of coal in Virginia from $3.00 to $6.00 per ton. Figure 1 attempts to diagrammatically indicate required restoration under the law at several typical slope variations. Conventional mining equipment such as crawler tractors can safely work on a slope of 2.1 or 27 degrees. Once the slope exceeds 27 degrees, it becomes difficult to cover the highwall, requiring additional equipment such as hydraulic excavators to restore the last 15 feet of material against the highwall.

There appear to be some areas where interpretation of the law can reduce the economic impact of complete restoration in steeper sloped areas and still fulfill the intent. Figure 2 relates one approach which would leave some highwall exposure but would obscure most of it and at the same time offer better control of runoff from above the working area. This method would allow equipment working areas on which to work at some point in the future, if it should become necessary.

Current thinking by the federal enforcement agency (Office of Surface Mining in Washington, D. C.) appears to put an additional penalty for mining in previously surface mined areas. Figure 3 represents an area where mining of this nature was proposed. According to the Office of Surface Mining, complete restoration of the old and new highwall is a requirement. Considerable economic relief could be realized and at the same time an improvement made to the existing situation by allowing the second cut to take place which would also allow partial restoration of the highway. In the example shown, the old highwall could be reduced from 75 feet to 25 feet while at the same time allowing additional coal to be recovered. If complete restoration of the highwall is required, then mining areas as shown by Figure 3 would not be possible and these coal reserves lost.

Another very costly area of the law is requirements for water quality standards and effluent limitations. The mine operator must provide a water monitoring program which gives adequate data to describe the likely



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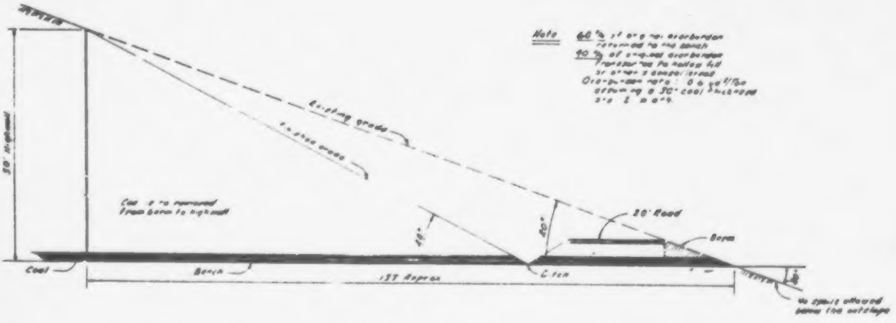

Note 60 % of original overburden returned to the bench
40 % of original overburden transported to hollow fill or other disposal areas
Overburden ratio: 8.6 yd³/Ton assuming a 30" coal thickness and 2' width
Existing grade
Finished grade
50' Highwall
Coal is to be removed from bench to highwall
19°
20°
20' Road
Berm
Coal
Bench
137' Approx
No spoils allowed below the outslope

Figure 1a

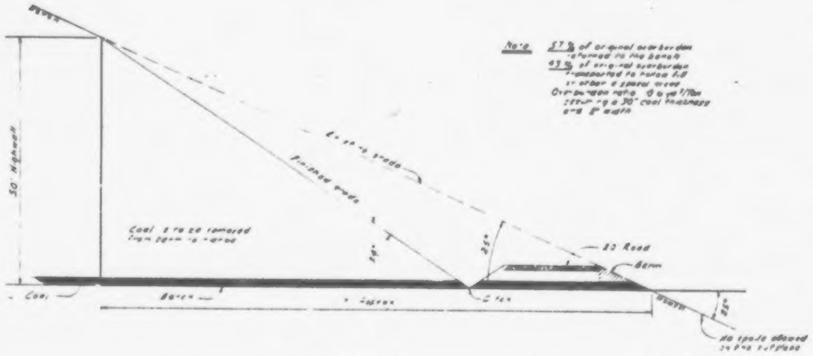

Note 57 % of original overburden returned to the bench
43 % of original overburden transported to hollow fill or other disposal areas
Overburden ratio 9.6 yd³/Ton assuming a 30" coal thickness and 2' width
Existing grade
Finished grade
50' Highwall
Coal is to be removed from bench to highwall
25°
20' Road
Berm
Coal
Bench
Approx
25°
No spoils allowed on the outslope

Figure 1b

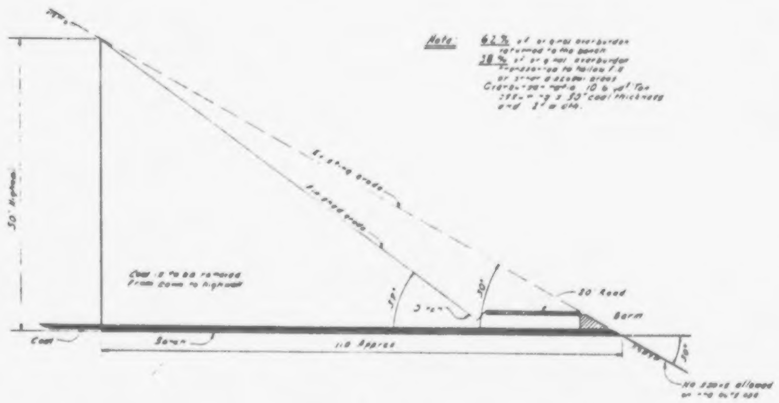
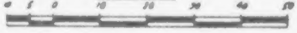

Note: 62 % of original overburden returned to the bench
38 % of original overburden transported to hollow fill or other disposal areas
Overburden ratio 10.6 yd³/Ton assuming a 30" coal thickness and 2' width.
Existing grade
Finished grade
50' Highwall
Coal is to be removed from bench to highwall
30°
20' Road
Berm
Coal
Bench
110' Approx
30°
No spoils allowed on the outslope

Figure 1c



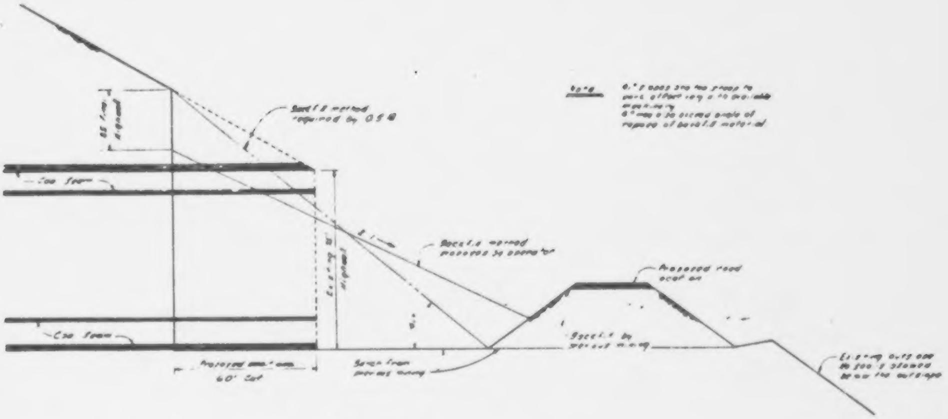

Backfill method required by OSM
Coal Seam
Coal Seam
Backfill method proposed by operator
Proposed road location
Proposed
60' Cut
Bench from previous mining
Existing outslope
Note

Figure 2

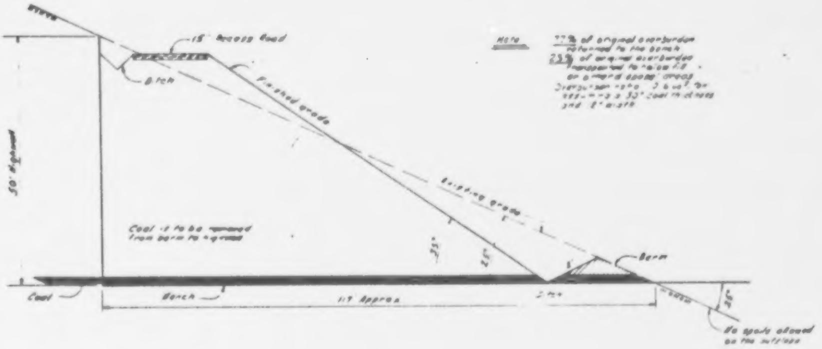


Figure 3a

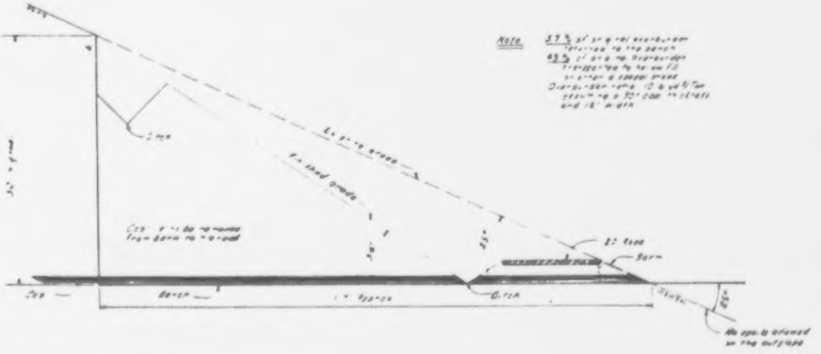
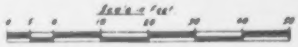


Figure 3b



daily and seasonal variations in discharge from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and if requested by the regulatory authority, any additional parameter characteristics of the discharge. In Virginia it is almost impossible to obtain enough capacity in sediment ponds to allow the suspended solids to settle out. Although effluent limitations which are to average 35 mg/l do not apply to a precipitation event greater than 10-year, 24-hour frequency, this effluent limitation points out the necessity of treating or controlling the discharge from the mining operation as soon as possible, as is observed in the example in Figure 2.

The facilities to accomplish these requirements are akin to sewage treatment plants required to serve many communities across the state of Virginia. Approximately the same quality of discharge must be maintained at the mine site. However, municipal and community sewage facilities are largely financed by federal grants and are depreciated over 30 to 40 years. Similar facilities at a mine site may have an average life of only three to five years.

There are some other areas of the law which simply increase the red tape and do not appear to accomplish much. The operator is required to make public a blasting schedule ten days prior, (but not more than 20 days prior) to initiating such operation along with the dates and time when explosives are to be used. These schedules are to be published in local newspapers, sent to local governments and public utilities as well as to residents within one-half mile of the site. Maintaining the records and correspondence related to this work will probably require an increase in the labor force at each job site. Signs and markers are also required to distinguish between top soil and other soil. Although not a significant requirement, the necessity of such a regulation is questionable.

According to OSM personnel, haul roads will have to meet federal grade requirements even though they are existing and have been in use for several years. If roads are brought up to the lower grade requirements, additional areas will be disturbed, thus causing more runoff and subsequently more erosion.

After completion of underground mining, surface work areas are to be regraded to approximate original contours. It appears that it would be better to seed the bench area of an underground mine than to redisturb the material that was initially removed to create the surface area for an underground mine, especially if this material has been stabilized for several years.

Also, PL 95-87 grants the regulatory authority the right to place a lien on orphan land that has not been reclaimed whether or not the surface owner wants this area reclaimed.

It is anticipated that these and other requirements will result in substantially increased cost in operation and affect the total price of coal taken from the mine site. At the same time, the increased complexity of operation, the higher manpower, and initial equipment outlay requirements will no doubt, discourage or even eliminate the smaller operator who has traditionally been a factor in maintaining competitiveness in the open market.

There is a provision for small operators, which would exempt them from the law until January 1979, but there are several requirements that many operators will be unable to meet by that time. This exemption is not as advantageous as it sounds once it is considered that initial equipment such as off-the-road haulers cost from $200,000 to $250,000 each.

No doubt, we will see the effect in our monthly power bill, in the increased cost of steel, automobiles and in other goods requiring substantial energy input to bring about the finished product. The extent of the increase will to a large degree be determined by those in the federal and state governments who promulgate the rules, interpret and enforce the laws established by our legislators.

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EXHIBIT C

SURFACE MINING OF COAL & LAND USE NEEDS CAN BE COMBINED TO IMPROVE THE ENVIRONMENT

by Dennis D. Willis, P. E.
Vice President, Mining Division,
Thompson & Litton, Inc.

MUCH HAS BEEN SAID in recent years about the degradation and desecration of land due to surface mining of coal. There are many widely publicized examples of where the land has been left devoid of vegetable life, the aesthetic value completely destroyed, and the effect on nearby streams disastrous. Often, unpublicized are the efforts expended to extract the mineral resources and re-establish the surface so that better utilization will result. The account of one such example follows where civic officials and a local company have worked together on a plan to enhance the local economy, improve land use, and improve living conditions.

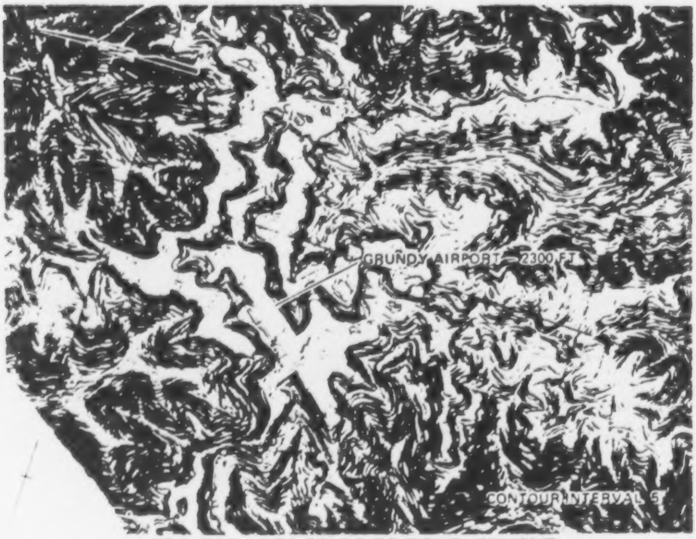
Buchanan County lies in the midst of rich coal reserves in far Southwest Virginia. The expanding demand for energy in recent years has brought about a need for more workers, hence increasing the demand for housing, public services, recreation and other land encompassing facilities. Buchanan County, however, is characterized by narrow valleys and steep mountain slopes, most of which exceed 40 degrees. Nearly all of the developable land has been utilized, making additional house sites especially hard to find.

Transportation is another difficult problem for the area. Highway access, although much improved in recent years, still requires a sizeable time lag to connect to larger metropolitan and business centers. Railroads are available but offer nothing for passengers and freight needs other than large industrial needs. The town of Grundy maintains a small airport nearby which has seen greatly increased usage, especially by local industrial concerns, as a means of effectively increasing productivity. However, the existing Grundy Airport was designed to meet standards established by the Federal Aviation Administration for Basic Utility — Stage I airports. This type can accommodate about 75 percent of the propeller-driven aircraft under 12,500 pounds gross weight and is primarily intended to serve low-activity locations having relatively sparse populations. Runway length is barely 2,300 feet. Twin-engine aircraft can now land at Grundy with only a marginal degree of safety. Also, numerous aircraft owned by individuals and corporations in the immediate area are unable to utilize the facilities at all.

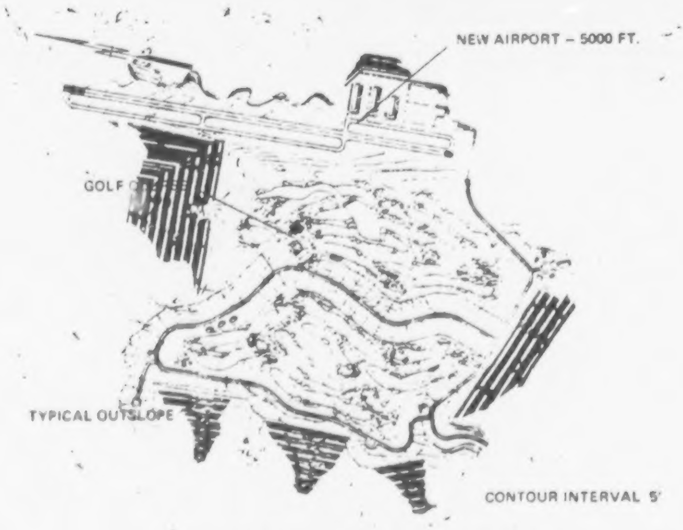
All of the problems outlined above appeared to dovetail into one solution recently. United Coal Company, a local organization, after some preliminary investigations, agreed with the Grundy Airport Commission to underwrite any costs in connection with a study evaluating coal reserves and possible land use around the current airport. Several months were expended studying coal reserves, evaluating land use alternatives, and assessing the impact of the project on the surrounding area. These findings indicated that there may be sufficient coal reserves available to justify completely removing the present airport and developing a new one on a finished and usable 550-acre reclaimed site. Most of the land around the area is too steep to develop in its current condition. Sufficient coal reserves (about 1.8 million tons) appear to exist to offset the removal and placement of 32 million bank cubic yards of material and lowering most of the ground surface some 200 feet. Excess overburden not used in landscaping the site can be placed in six hollow fills located around the perimeter of the site. Fills can be graded to a 2 : 1 slope in the hollows and will be terraced with 20-foot wide benches every 25 feet horizontally to control surface drainage. All natural watercourses in the hollows may be preserved by constructing rock core French drains which will receive channeled runoff from the benches insuring stability of the fill area.

Erosion during construction can be controlled primarily by limiting the amount of area which would be subject to erosion. No sediment ponds are proposed. Instead, erosion and sediment deposition is prevented by continued use of temporary berms, diversion ditches, sediment traps, sediment barriers, and vegetal filters.

The new airport will be 5,000 feet long instead of 2,300 feet and have a 100-foot paved runway instead of the current 50 feet. After making a liberal allowance for the airport, space still remains for 82 spacious residential lots around an 18-hole golf course with a complete line of additional recreational facilities.



PROJECT AREA PRIOR TO DEVELOPMENT



PROJECT AREA AFTER DEVELOPMENT

Locating the best housing, recreational, and transportation facilities at one place will be a first for Southwest Virginia. It is also a clear demonstration that mined land reclamation programs can be integrated to serve the needs of localities as well as fulfill the expanding energy requirements of our society, if proper planning is instituted. Negotiations are currently underway to enter the construction phase. All indications are that the project is feasible at this point. Final go-ahead must depend on balancing prices on the rather fluid coal market with the cost of earth removal. If these are successful actual work on the project should begin in the latter part of 1977.

Highwall relief?

Haney makes AOC recommendations

The National Academy of Sciences has issued a report that adds new fuel to an old industry contention—that it's not always necessary or advisable to return to approximate original contour or to completely eliminate the highwall in surface mining reclamation.

Recommendation that the Act "be applied in such a way as to allow a small portion of the highwall to remain in some cases" is contained in the report, prepared by the Committee on Highwalls and Original Contour. The committee, chaired by Dr. Donald Haney, state geologist and director of the Kentucky Geological Survey, was charged with conducting necessary studies and advance recommendations for the AOC and highwall elimination provisions of PL 95-87.

The report is the culmination of studies that began in November 1982. With the assistance of the NAS Board of Mineral and Energy Resources and Commission on Physical Sciences, COHAOC interviewed representatives of OSM, the coal mining industry, the Interstate Mining Compact Commission, U.S. Fish & Wildlife Service, Geological Survey and ERA. State regulatory agencies in coal mining states were also interviewed. Additionally, COHAOC examined contour mining and reclamation in Appalachia, mining at high elevations in Wyoming and area mining and final-cut lakes in Indiana. Numerous documents, including PL 95-87 and its legislative history were also reviewed.

Long-Term View

Stressing the importance of a long-term point of view for both surface and underground coal mining operations, the report says that restoration to AOC and elimination of highwalls for surface and underground mines cannot be separated from postmining uses of restored land." This is especially evident," the summary says, "in leaving final-cut lakes in area surface mining and in planning for mountaintop removal in the steep terrain of the Eastern Coal Region. In these cases the variation from restoration to AOC is based on creating ecologically sound land forms and the potential for new land uses. The appropriate methods for achieving agreement on postmining land uses are called for.

The report includes the following recommendations:

- While restoration to AOC and total elimination of highwalls are nearly always achievable and desirable, and the Committee recommends that they generally be done, there are situations in which it is not advisable to return completely to AOC or to eliminate the entire highwall. Therefore the Committee recommends greater flexibility in the implementation of the Act and regulations to allow for such cases without compromising the long-term environmental stability that is a basic purpose of the Act.
- In some situations, especially in steep contour mining areas, in order to achieve stability it may be necessary to leave a portion of the highwall. Stability of the backfill should take precedence over complete highwall elimination. If it is not possible both to cover the highwall and to achieve a stable backfill, the backfill should cover the maximum highwall possible with a static safety factor of 1.3 (or 1.5 in a populated area).
- If a drainage ditch is needed at the top of the backfill in contour mining, a portion of highwall should be left if it is a necessary part of the ditch. In some cases it is desirable to have a terrace at the top of the backfill and leave a low highwall to improve safety in backfilling and grading operations and to prevent erosion, as long as the mined area is substantially returned to AOC.
- There are some circumstances in which it is reasonable to leave most or all of the highwall along a portion of the bench if there is strong potential for a suitable postmining land use, as long as the coal in the highwall is covered and surface drainage is controlled. In all such cases, the justification for leaving a portion of the highwall should be clearly stated in an approved postmining land use plan.
- Highwall elimination and AOC requirements for area mines should be eased where it is necessary to provide for a postmining land use that has been identified and justified in an approved postmining land use plan.
- Leaving permanent impoundments after mining should be encouraged if they will not cause a significant loss of high-value land, if they are designed for a specific postmining use, if they will have water quality and water level stability appropriate for the intended use, and if they are structurally sound.
- Mountaintop removal, now considered an exception to the AOC requirement, is often warranted and should be viewed as a normally allowed practice, as long as it is done within the guidelines of an acceptable and long-term postmining land use plan. Postmining land use plans for each mountaintop removal area should be viewed in the context of surrounding land uses, so that the proposed uses of the level area are based on realistic judgments of both short-term and long-term needs.
- The Committee generally recommends against further efforts to eliminate abandoned highwalls or restore to AOC abandoned mine lands that have stabilized and revegetated. For those abandoned area-mined lands that have not revegetated, the Committee favors regrading before attempting to revegetate them, as long as this can be done without adding to erosion problems. The goal should be to restore the surface to a configuration that can be revegetated and that will have public benefits compatible with those of surrounding lands. This can best be achieved in the context of a land use plan.
- In recognition of the unique requirements of reclamation in different regions, a regulatory approach based on performance standards is preferred to one based on design criteria.
- Decisions regarding highwalls and restoration of the land to AOC should be made in the context of a postmining land use plan, under goal-oriented federal and state guidelines, with provisions for local public involvement, including the views of the landowner.
- Greater flexibility should be permitted in developing postmining land use plans. Less emphasis should be placed on premining land use patterns, and more consideration should be given to long-term local and regional economic goals and social benefits.
- The Office Surface Mining should assemble and make available records of information, on a site basis, on the status of reclamation, including safety, stability, postmining land use, and environmental effects of surface mining and reclamation.
- Research is needed to substantiate the validity of the static safety factor as a measurement of the stability of backfills on contour mines.

Dr. Donald Haney

The report is titled "Highwalls Elimination and Return to Approximate Original Contour as Required in the Surface Mining Control and Reclamation Act of 1977, published by The National Academy Press, Washington, D.C.

Senatorial comment

Kentucky's senior Senator Walter "Dee" Huddleston told the KENTUCKY COAL JOURNAL the following after review of the COHAOC report in Washington:

"Dr. Haney's report only serves to solidify arguments that Sen. (Wendell) Ford and I have made before and since adoption of PL 95-87. Should the Congress ever get around to revising the Surface Mining Act, Dr. Haney's [illegible] will be of much use to us."

Two Kentucky projects alive

Two proposed Kentucky projects are still in the running for loan or price guarantees from the U.S. Synthetic Fuels Corporation.

According to a mid-March release, the Kentucky Tar Sands project in Logan County and the Means Oil Shale project in Montgomery County have been advanced to Phase II of third round consideration.

Texas Gas Development Corporation is sponsor of the tar sands project. The company seeks price guarantees on a project designed to produce 13,000 BPD of upgraded shale oil and 30 net MW of electricity in Montgomery County.

The Synfuel Corp. also announced that directors had given tentative approval to an amendment that would establish two categories for priority awards under a new solicitation.

If the amendment is adopted, projects will be able to compete for assistance as follows:

- Those producing at least 6,000 barrels of crude oil equivalent per day of synthetic fuel product from Eastern Province of the Eastern Region of the Interior Province bituminous coal, and
- Eligible projects using any domestic coal (including lignite and peat), oil shale, tar sands and heavy oil.

The amendment was sent to the Corporation's advisory committee for review and comment.

SECTION 2

GROUNDWATER MONITORING

COMMENTS

COMMENTS FOR MODIFICATIONS ON EXISTING GROUNDWATER MONITORING PROGRAM

Groundwater degradation as a result of coal mining operations is exemplified in a reduction of quality as well as in the quantity of the existing groundwater. The present monitoring plans have some slight flaws and alternate routes are available to assure that accurate and useful results are obtained for the various parameters monitored.

Any monitoring program construed to protect this resource could be best designed on a site-specific basis. The complications of allowing varying types of plans could be multitudinous and the task of establishing guidelines for each case would be difficult. However, with this in mind, the best course of action could very well be to allow an option between three or four plans designed to perform best under a given set of circumstances.

One modification of the current monitoring program which should be reinterpreted is the inconsistency of the time span permitted between the qualtiy analysis now required quarterly. The regulations state simply that the site will be analyzed during the calendar quarter. This particular situation allows the site to be sampled during the next week of one calendar quarter and the first week of the next quarter and conceivably not sampled for the next six months. This policy voids the benefit of interval monitoring and should be corrected to specify when quality analysis should be performed.

This stipulation would not necessarily specify the same time for every permit but would allow the operator to state in the individual application at which time the site is to be analyzed so that this analytical work load can be balanced. A more specific interval would make interpretation of acquired results much more valid and could conceivably justify a reduction of the sampling frequency.

The most elementary alternative of the present monitoring programs is one similar to the existing plan itself. The initial monitoring schedule would be adhered to as the existing plan is at present. However, data would be interpreted as acquired to determine if conditions warrant a staged reduction in monitoring frequency. For example, the data from an operation establishes a consistent or stable groundwater condition during what is determined to be the most crucial mining steps. This information could be utilized to justify a reduction in the scheduled sampling. A phased reduction from quarterly to semi-annual monitoring would not be unacceptable if the parameter values warrant such a reduction. Allowing the operator the option of using the present monitoring plan or submitting a site-specified plan based on a professional evaluation of the conditions would allow a much more flexible approach to the concept of groundwater monitoring.

A major concern with the plan is that the additional cost for the consultant and his required research could outweigh the benefits of a reducted schedule. However, giving the operator a choice as to how it (the monitoring) will be done should settle his concern. In addition, to reduce the consultant cost, a group of detailed plans would be established describing the conditions under which they are to be employed. The consultant would then decide on the best monitoring plan according to his interpretation of the existing conditions.

Establishing a solid baseline condition would be necessary to justify a reduction in monitoring frequency. An expanded baseline program would serve the operator's interest as well as the public's benefit. It is necessary to establish existing conditions by using a sound scientific approach.

Both quality and quantity of groundwaters in Southwest Virginia are subject to seasonal variation. Documenting the existing conditions would protect the operator from unfounded claims of degradation during the term of the operation as well as establishing existing conditions to warrant reduction of monitoring frequency. A program focusing on both the critical periods for the season and anticipated problems due to mining could be devised to best address all areas of concern.

Another alternative in reduction of monitoring frequency involves bi-weekly groundwater sampling. One idea involving the elimination of bi-weekly samples and substitutes a more detailed analysis in the middle of the quarter. There would be a sample every six weeks and reported quarterly. The samples would alternate between the presently existing quarterly group of parameters and the waters is of major concern, the bi-weekly parameters could be maintained and quarterly analysis reduced to semi-annual monitoring.

The flexibility of site-specific monitoring makes it more efficient and allows concentration of effort in areas of concern without unnecessary expense. However, stringent guidelines are needed to aid in establishing a more consistent overall program and much research would need to be done to quality these guidelines.

Southwest Virginia coal can be strip mined with minimal damage to ground and surface water quality if a few practical mining techniques are observed and enforced equally throughout the industry.

Despite efforts to increase the predictability of ground and surface water pollution by mining activity few technological advances have appeared at the mine site that have not been available since strip mining began. There are now, as there always have been, a hand full of simple and practical methods that can be used to prevent water pollution as follows:

1. Segregate toxic material and seal it in clay.
2. Divert natural runoff away from the mine site.
3. Seam faults, fractures, and possible points of groundwater infiltration with clay.

4. Rock and seed channels to prevent erosion.
5. Direct all surface runoff from the mine site to settling ponds where suspended solids, iron, and Manganese can be removed.
6. Store topsoil and put it back on the reclaimed site.
7. Seed the area with vegetation that will take root fast and prevent further erosion.
8. Do not disturb natural stream beds.

Recently, there has been a huge effort to define the location and characteristics of groundwater reservoirs and to predict the effects of mining on the quantity and quality of the water in them. Groundwater reservoirs in Southwest Virginia provide low yield and poor quality as they always have. No major towns use groundwater as a source because there is not enough water and it costs too much to remove the high levels of Iron, Manganese, and Hydrogen Sulfide present in nearly every well.

Yet, seemingly because a large aquifer in several midwestern states appears to be disappearing as a result of widespread municipal pumping, coal opertions in Southwest Virginia are now required to pay for extensive theoretical investigations of groundwater reservoirs.

The results of this data collection and analysis are never conclusive and therefore are of no value. They merely serve as ammunition for a game of written and verbal volleyball between operators and mine inspectors.

Two examples of needless expense are drilling programs and the study of surface lineation. Drilling to determine groundwater locations and flow profiles is expensive. It takes a lot of holes to determine parameters required for the analysis.

The expense is needless. Since the results are now conclusive, any mine plan can be justified or unjustified by the data.

Surface lineations are determined from satellite photographs and plotted on small maps. The maps are two dimensional with no indication of how far or in what direction the lineations go beneath the surface. From this sketchy data, engineers and geologists must determine the effects of the mine activity on the groundwater.

Since one can never drill enough holes to be sure about the groundwater quantity of flow direction, and the effect of surface lineation is unsettled, what good is all their analysis? None.

While opertors and inspectors squabble over academic issues, Southwest Virginia watches hundreds of tons of soil wash out of the mountains after every rain. It is obvious that all of this extra expense and analysis has had no effect in the field. After twenty years of strip mining in Southwest Virginia, the only practical developments are the practical mining techniques previously listed.

The place for academic is at a University, yet mine inspectors seemd to think they are professors in charge of a major research project entitled "The Effects of Mining in Southwest Virginia".

It is unfortunate, but true, that all of their glorious research has been of no benefit to Southwest Virginia's environment or people. Only by use of practical techniques, which are already available, can we insure protection of Southwest Virginia mountains.

SECTION 3

TWO ACRE MINE SITE

COMMENTS

OSM RULES CONCERNING TWO-ACRE EXEMPTIONS VS VIRGINIA'S TWO-ACRE REGULATIONS

Four particular rules appearing in the August 2, 1982, Federal Register Vol. 47, No. 148, Pages 33424-33432, and have not been adopted in Virginia's two-acre regulations are distinct problem areas if Virginia were forced to adopt the federal interpretation. Any one of these, if adopted, would potentially eliminate two-acre exemptions in Virginia.

The first is a determination of "affected area" (30 CFR 700.119(b)(1)) and (30 CFR 701.5) which concerns two or more operations using the same haulage or access road, and states that each operation must include the road in their acreage computation. This, in most cases, would automatically push the acreage figure over two acres, even though that road has already been permitted and bonded by another operation.

This "affected area" definition also requires that surface or shadow area over underground mines be included in the acreage computation. The only reason we can see that this might be included in the rule is to protect against subsidence. Historically, subsidence has not been a problem in Southwest Virginia as it might be in other states and in the instances where it has occurred, the operator has been held liable, for which operators are insured. Again, by including surface area over underground mines, the acreage figures would automatically be greater than two acres. (Please see the attached Illustration #1).

The third point of concern is 30 CFR 700.11(b)(2) in which operations would be considered "physically related" if drainage from these operations enters the same watershed within a radius of five aerial miles. (Keep in mind that any point source discharge from each site is already required to meet applicable EPA effluent limitations). In Southwest Virginia's mountainous terrain, a five mile radius appears extreme, and studies conducted by USGS indicate such. Therefore, Virginia's solution is better for Virginia. If two or more of the operations are deemed "physically related", their acreage must be combined, which again, will cause the total acreage figure to be greater than two acres.

Finally, also included in 30 CFR 700.11(b)(2)(ii) & (iii) is a "test" to determine "ownership or control" of any operation. As you know, most small operators here mine on a contract basis for the larger operators. By this definition of "control" the contract operator could not qualify for a two-acre exemption. If Virginia is forced to adopt this definition of control, two-acre opertions will be virtually eliminated.

The two-acre exemption was a provision of PL-95-87 and Congress intended the exemption be available to those states who wished to utilize it. Under the regulations quoted above, the two-acre operation is no longer attainable because no one can qualify under criteria setforth by O.S.M.

In our opinion, Virginia has done a good job in drafting regulations (Chapter 23 of the Virginia Code) which regulate the two-acre operation and the federal regulations should be relaxed to allow Virginia to continue with its two-acre program.

The two-acre mine site allows the small businessman an opportunity to mine smaller blocks of coal which the larger coal companies may never be interested in developing because of the short life of the mine and development costs. If the two-acre exemption is not relaxed, the small operator (less than 100,000 ton per year producer) will be no more. In this time of high unemployment in the coalfields this seems antiproductive. Also those small blocks of coal will go unmined. PL95-87 specifically states "maximization of Resources" will be a consideration of the law.

SECTION 4

EXPERIMENTAL PRACTICES

COMMENTS

COMMENTS CONCERNING EXPERIMENTAL PRACTICES

Experimental practices are a provision of PL 95-87, Section 711 of the Federal Surface Mining Control and Reclamation Act of 1977. Congress intended this section to "...encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, public use (including recreational facilities)..." The intent of the section is good but there are two major drawbacks - the cost to qualify and the cost to document findings. Under current mining costs it is doubtful many operators will be willing or able to lay out the capital expenditure necessary to qualify for the experimental practices regardless if it is done thru outside consultants or with in-house staff. Once state and federal authorities approve the concept the operator is then faced with bearing the costs for long term monitoring of the experimental project to show whether it failed worked.

It would be desirable for partial funding to be made available to operators who qualify for assistance in deferring such costs. Or as in the case of the first operator in Virginia to qualify, fund a university program which could report the findings back to industry.

SECTION 5

ABANDONED MINE LANDS (AML) PROGRAM

COMMENTS

COMMENTS ADDRESSING THE A.M.L. PROGRAM

The Abandoned Mine Lands Program (AML) is a provision of PL 95-87, Section 402 of the Surface Mining Control and Reclamation Act of 1977. Currently operators contribute 35 cents per ton for surface coal, 15 cents per ton for deep coal into the reclamation fund. This fund was initially to be a 15 year program beginning in 1977 where all coal operators would participate. Money from the fund was to be used in reclamining old Abandoned Mine Lands (orphan land) which was mined prior to 1977.

Currently, money paid into the fund by operators is divided 50/50 between O.S.M. and the state regulatory authority for AML programs. We feel a larger portion of the money should be returned to the individual states. A split of 25/75 would be more appropriate. Placing more of the responsibility on the individual states would increase jobs and cash flow into local economies which the coal producing communities are in dire need. Also the program would be more effectively run on a local basis.

SECTION 6

O.S.M. INVOLVEMENT IN VIRGINIA

COMMENTS

COMMENTS ADDRESSING O.S.M. INVOLVEMENT IN STATE PROGRAMS

This section is a general discussion of O.S.M. involvement and is drafted from observations of AMRP's memberhsip. Now that primacy has been granted to many of the coal producing states, O.S.M. is following up its review and approval process with an oversight roll. In this oversite role O.S.M. has offices in various states manned by a technical staff and field personnel. O.S.M. personnel inspect mine sites at least once a year and review permit packages for discrepancies between proposed and actual structures and technical soundness.

O.S.M. over the years has applied more pressure to Virginia than it has to other states. The two-acre exemption is a good example of this. O.S.M. appears to be making an example of Virginia to other states because Virginia operators have always stood up and voiced their opinions. The two-acre regulations are currently in Federal District Court in Washington, D.C. awaiting a decision of the court. Virginia and its operators do make a sedulus effort to administer and comply with the regulations. O.S.M. has said they have the time and resources to wear Virginia down in this case and will ultimately win. This is discouraging especially in light of the intent of congress for the two acre exemption and it is a no win situation for the state.

With mining occurring in a variety of states with radical differences in topography, a universal set of mining regulations is not appropriate for such regional differences. For example, Virginia, West Virginia, and Eastern Kentucky have similar mountainous topography while Wyoming, Indiana, and Alabama might have flat to rolling coal bearing areas. PL 95-87 should allow more flexibility in state programs rather than applying one set of regulations for all. It is difficult for mountainous areas to comply with regulations written for flat to rolling areas and visa-versa. Mining methods and equipment vary from region to region. Topography dictates the mining methods and mountainous regions do not mine the same as rolling to flat regions. More flexibility is needed for the varied mining regions. Background data for permits is also regional and all states should not be required to assemble similar data which is not pertinent to the region. Refer to the Groundwater Comments Section of this document.

Enforcement consistancy among states by O.S.M. deserves a review. Wildcaters continue to operate in some states. They have no permit, are trespassing on both surface and mineral rights, pay no royalties, and perform no reclamation work. What this means to Virginia is heavy competition in the marketplace. It is an abomination to the industry that this Wanton disregard for individuals rights and the law is permitted to continue in this day and time.

In its oversight role, O.S.M. repeatedly applies pressure to Virginia in requiring enforcement actions of the state. Failure to comply with there wims results in confrontations and threats of program revocation. Virginia has primacy and is attempting to carry out its program. Virginia is struggling from O.S.M.'s consistant meddling and interference. O.S.M. has become very costly to the state and operators of the coal fields. 30% unemployment is not a pleasant experience.

We ask for relief from the O.S.M. bureaucracy.

Senator **Warner**. I tell you, we will have to accept the balance of your points for the record now, because of the allocation of time. Thank you for your hepful contribution to this hearing.

Now we will have Mr. Plass, consulting forester from West Virginia on behalf of the National Academy of Sciences.

STATEMENT OF WILLIAM T. PLASS, CONSULTING FORESTER, PRINCETON, WV, ON BEHALF OF THE NATIONAL ACADEMY OF SCIENCES, COMMITTEE ON HIGHWALLS AND AOC

Mr. **Plass**. My name is Bill Plass, consulting forester, Princeton, WV. It has been a privilege for me to serve as a member of the committee on highwalls and approximate original contour sponsored by the National Academy of Sciences.

I welcome this opportunity to provide a brief overview of some of the important findings of the committee and that are presented in the report that you referred to earlier in your remarks, Senator.

There have been three National Research Council committees that have reported on aspects of mined land reclamation that are relevant to this report, as far as background information in leading into our discussion here. In 1979 the committee on surface mining and reclamation studied the implications of extending the requirements of Public Law 95–87 to noncoal minerals. The 1980 committee on Alaskan coal mining and reclamation examined the application of the act to coal mining in Alaska, and the committee on disposal of excess spoil in 1981 reported on reclamation problems of disposing of spoil in excess of that which can be permanently placed on the mined area.

In September 1982 the National Research Council's board on mineral and energy resources contracted with the Office of Surface Mining to conduct a study of the concepts, technologies, and philosophies associated with the AOC reclamation, especially in relation to the removal of highwalls resulting from surface mining operations. Although it was not possible to make an all-inclusive survey of the results of Public Law 95–87, an attempt was made to answer the question: Are the requirements of the act with respect to restoration to AOC and elimination of highwalls supportable from a geological, environmental, and socioeconomic standpoint?

An 11-member committee with a broad range of technical and disciplinary experience was appointed by the board on mineral and energy resources. The committee's work began in the fall of 1982 and was completed in March 1984. During this period the committee heard testimony from representatives of Federal agencies, State regulatory agencies, coal mining companies, and other concerned groups.

Senator **Warner**. Did that include representation from the environmental community?

Mr. **Plass**. Definitely. We made a special effort to invite them to contribute to this discussion.

Senator **Warner**. Did they?

Mr. **Plass**. They did. Yes, they did.

Visits were made to West Virginia, Indiana, and Wyoming to observe reclamation and discuss the AOC and highwall elimination requirements with personnel in the field. We were very pleased to have the representatives from the Virginia Division of Reclamation represented at our meeting in Charleston, WV. It also should be noted that charts from the Virginia regulations are included in the report on pages 46 and 48.

Thus the committee studied the implementation of the highwall and AOC provisions in various regions of the country and under various types of surface mining.

General conclusions that we have drawn from our experience inclued significant improvements in mining and reclamation that have been made under the act. Mined areas are being restored to AOC, and there appears to be only limited disagreement with the practice and its results.

Landscapes are being returned to their premining form and vegetative cover is being established.

The committee saw no evidence of massive failures of backfill in steep terrain. It became apparent that restoration to AOC and elimination of highwalls cannot be separated from postmining uses of the restored land. These go hand in hand.

Variations from AOC provide an opportunity to create ecologically sound land forms and the potential for new land uses.

While restoration to AOC and total elimination of highwalls are nearly always achievable and desirable, and the committee recommends that they generally be done, there are situations in which it is not advisable to return completely to AOC or to eliminate the entire highwall; therefore, the committee recommends greater flexibility in the implementation of the act and regulations to allow for such cases without compromising the long-term environmental stability that is a basic purpose of the act.

In contour mining the committee recommends the act be applied in such a way as to allow a portion of the highwall to remain in some cases. Justification may include greater stability of the backfill and an increased factor of safety. This is paramount. This is the first thing we looked at.

Reduction of hazards associated with the backfilling operation. This applies to the miner himself.

Improved drainage.

Increased land use options.

Increased ecological diversity due to retention of cliff-like structures. We believe that leaving a portion of the highwall is preferable to forgoing mining.

Senator WARNER. On that point, as a practical result, testimony today has referenced, and I have witnessed myself the returning of the land to the full highwall now, and then through the passage of time, you have a settling effect where X percent of an exposed highwall was created. Now you would be adding to a Y percent, X plus Y, for the total effect, wouldn't you?

Mr. PLASS. Yes.

Senator WARNER. How would you approach the formula by which a decision is made. Would you use so many feet in this particular contour? It is almost on an ad hoc basis, individual basis you would have to make this; wouldn't you agree?

Mr. PLASS. Site by site basis.

Senator **Warner**. And that discretion presumably would be reposed in the State authorities.

Mr. **Plass**. Would be what?

Senator **Warner**. Reposed—the State authorities would exercise them.

Mr. **Plass**. Yes, that is right. Like I say, our primary concern is the stability of the backfill. You don't return the highwall, completely eliminate the highwall, if in the process you create an unstable backfill. As in the Virginia law, there is a provision that they maintain their stability factor, and in the process they do allow a portion of the wall to be exposed, but stability is the main point that they are looking at.

Senator **Warner**. Now this formula wouldn't lend itself to much increased utilization of that land for other purposes, would it?

Mr. **Plass**. No, it would not.

Mountain top removal, now considered an exception to the AOC requirements, is often warranted and should be viewed as a normally allowed practice. The conditions under which mountain top removal will be approved and the restrictions placed on it can best be set in land use plans. Inasmuch as the need for level ground may not materialize for years or even decades, but the opportunity for creating level ground exists only now. The active regulations should emphasize the conditions to be achieved rather than the specific or immediate uses.

Forestry may be an appropriate use and should be allowed, especially until specific needs for level land develop. You can always put it into forestry and then as your uses develop, you can clear this and go back to the uses that can't be foreseen immediately.

Now the decisions regarding highwalls and restoration of the land to AOC should be made in the context of a postmining land use plan, under goal-oriented Federal and State guidelines, with provisions for public involvement. We found this to be very important, that there is not enough emphasis given to the postmining land use plan. This should be up front in the permit. This is the first consideration. The use of postmining land use plans to specify the objectives to be achieved by reclamation may be termed regulation by performance standards. A regulatory approach based on performance standards is preferred to one based on design criteria because of the unique requirements of reclamation in the different regions.

The committee favors using technical assistance and economic incentives rather than regulations whenever possible.

Greater flexibility should be permitted in developing postmining land use plans. Less emphasis should be placed on premining use patterns, and more consideration should be given to long-term local and regional economic goals and social benefits.

The act allows some latitude in determining postmining land uses, but this flexibility does not appear to be fully used in implementing the law.

Reclamation plans should give greater consideration to the creation of wetlands, retention of some parts of stable highwalls, greater diversification in vegetation and other practices that enhance wildlife and aesthetic values.

Senator **Warner**. Tell you what, to the extent you can leave part of that to be inserted in the record, it would be appreciated. Have you pretty well covered the main points?

Mr. **Plass.** Well, there are other things here I would like to get into quickly, if I may.

Senator **Warner.** Surely.

Mr. **Plass.** The committee generally recommends against further efforts to eliminate abandoned highwalls or to restore to AOC abandoned mine lands that have stabilized and revegetated. This is applicable to ones that have not been revegetated, but we think if they were in a state of repair, then leave them alone.

One point that I wanted to stress, Senator, is that there is a definite lack of information on reclamation, needs and results. And this actually limited the committee's ability to make definite statements and reach some conclusions. OSM should be compiling data and making them available to the States, operators, and others in a systematic way. This responsibility is defined in the act. Information should be assembled and made available regarding safety hazards, factors that may affect stability, postmining land use patterns, and the environmental effects of surface mining and reclamation.

Senator **Warner.** Stop for minute—see if we can get that noise stopped.

Go ahead.

Mr. **Plass.** Having such data available is important for judging the effectiveness of reclamation programs, for identifying problem areas, and for determining program and budget needs.

The committee found it especially difficult to judge safety problems with current available information. Better classification of causes of accidents is needed.

Now in research the main area concerns the stability of the backfill on contour mines. There is a need to substantiate the validity of the static safety factor as a measurement of the stability of backfills on contour mines.

Improved models of surface erosion in relation to the character of backfill and grading materials are needed to replace erosion models developed for common agricultural practices.

There are areas of environmental concern and the relationship of mining to surface and ground water conditions in backfills. Talking about backfills, this should have been included, studies to determine the effectiveness of current methods for plugging auger holes and the effect of outcrop barriers and toxic wastes on the movement and quality of ground water. We need to know these things. We don't know what is happening below the surface on many of these backfills.

More research is needed on the habitat character of reclaimed land and the ability to influence habitat through reclamation practices.

Esthetic considerations, which we have heard so much of in the formation of this act, in leaving portions of the highwall and grading backfill material could also be the subject of research.

Thank you, sir.

I trust this will be entered as a portion of the proceedings.

Senator **Warner.** I judge legislation would be needed if it is determined that the recommendations, part of all of this report should be implemented.

Mr. **Plass.** It should be a basis for making decisions on what areas should be considered as far as, either legislation or modification in regulations.

Senator WARNER. Thank you.

The next panel is the concerned citizens panel, citizens who are expressing primarily the environmental viewpoint, which is an important consideration, equally important to others that we have heard this morning. We will lead off with Mr. Edward Grandis, who is well known to the Senate Energy Committee, Betty Wells, president of Citizens Organized Against Longwalling, from Ohio, and Mr. Patrick Ronan, director, Appalachian Office of Justice and Peace on Behalf of the Catholic Diocese of Richmond, and Mr. Mercure, counsel on Save Our Mountains, Clintwood, VA. They are all present. Thank you.

Mr. Grandis, we are deighted to hear from you.

STATEMENT OF EDWARD S. GRANDIS, DIRECTOR, CITIZEN MINING PROJECT, ENVIRONMENTAL POLICY INSTITUTE, WASHINGTON, DC

Mr. GRANDIS. Thank you, Senator Warner, and the members of the energy and mineral resources subcommittee for this opportunity to testify today. My name is Ed Grandis. I am director of the Citizens Mining Project, which is part of the Environmental Policy Institute in Washington, DC, and we are a public interest research organization that has been working over a decade on energy and water resource issues and the Citizens Mining Project is an outgrowth of the passage of the Federal Surface Mining Act and we formed in 1977 to continue the work we have been doing in Washington to assist citizens around the country, and working with States and some coal industry representatives on the implementation of this law.

Before I rain on the parade of the distinguished speakers this morning representing the coal industry, I would like to start off on a very positive note to say that since the States have obtained primacy, and particularly Virginia, we are very impressed with the improvements that have been made. We think that these improvements throughout the country, and particularly in Virginia would not have been made as quick or as uniformly if it had not been a Federal Surface Mining Act.

Additionally, I think it is important for this hearing to indicate that the citizens throughout the country and our organization feel we have been people who have been moderates and we have compromised. In every group and every constituency you have radicals. You have people on both extremes. I think in our area we have a share of our own, but I think as far as the organization goes and citizens I have worked with around the country know that I have worked with your committee and with the House committee have been responsible people. I think it is important for this hearing to show that we feel that the 1977 act was a product of compromise, and it somewhat pains me this morning to hear that this committee may be thinking we should be compromising again.

Senator WARNER. Who said that? This committee?

Mr. GRANDIS. Yes.

Senator WARNER. You are referring to——

Mr. GRANDIS. This morning I heard certain indications that you would like to see a willingness for us to be more moderate.

Senator WARNER. I think that expression was made by a witness and I seized upon it as a possible solution, a means to achieve a measure of détente, shall we say, between the various factions.

Mr. GRANDIS. For us to do that, I think we have always had a willingness to sit down and discuss.

The history of OSM, their rulemaking process, the public interet in coal industry has put in reams and volumes of material, so I think that the discussions have been forthcoming since 1977. I am just disturbed that perhaps the debate, if they have debate, may be focusing on a new position of moderation, and I believe that if we are going to have a moderation, we need to look at where this act, the genesis of this act, which is the debate of the early 1970's.

To get my testimony on point, I would like to indicate that while we are very impressed and we sincerely are pleased with the performance that we have been seeing accomplished around the country, that is the Appalachian region there are still significant deficiencies that we feel are generic in the program, in the individual State programs. And I would like at this moment to make a list and perhaps after the hearing, perhaps in a future hearing or with your committee, go into detail.

Senator WARNER. This record will remain open for another week, at which time you can make such contribution as you or any other witness would like to make.

Mr. GRANDIS. Thank you.

Under the permit approval process, still the States are approving what we view deficient permits or permits that have improper and inadequate data. They are approving permits with improper variances. They are improperly waiving permit technical analysis that must be part of a permit process to get approval to assure that reclamation and mining techniques they propose can be met. They have failed to make written findings regarding permit approval.

They have inadequate written findings regarding these permit approvals, inadequate technical standards for permit; insufficient permit data; insufficient cumulative hydrologic impact data; improper decisions regarding mining acts or proposals such as sedimentation pond design and construction, haulage roads.

Under the inspection and enforcement area, we still are concerned about the failure to meet required inspection frequency.

There is inadequate and incomplete inspection reports as we go back and work with citizen groups and working with their citizen programs. There is inadequate response to 10-day notices that OSM comes up with and gives to the States.

There is inadequate response to citizens' complaints we feel in certain cases. Insufficient staff or staff training. Failure to cite and observe violations still continuing, as well as failure to cite violations in a timely manner.

What I would like to do on this point, so you understand, a number of States have developed a policy which somewhat precedes the act, where, when they do an inspection, instead of citing what they perceive to be a violation, and the State inspection report says this is a violation, the State notes it, but does not issue an NOV, a paper citation in that case. And while we believe that cooperation should be the rule, we believe that for there to be a legal followup, there has to be a citation noted.

Improper vacations of NOV's and CO's still are occurring. There is still failure to establish abatement periods; improper extension of 90-day abatement periods are continuing.

In the civil penalty area, the States are still failing to assess civil penalties in numerous cases, and there is improper assessment of civil penalties.

In the bonding area there is still inadequate criteria for bond release in many cases by the State. Improper bond release in certain instances and insufficient bonding levels.

Now all of these concerns that I have raised are not the product of citizen groups or not the product of my own organization. All of this information comes from the reports that the Office of Surface Mining is under the statute required to develop and submit to Congress on a yearly basis, as you are familiar with the State annual reports. I have submitted, and I thank you and the committee for allowing this docket to be made part of the record. Like I say, that makes it sound like there are some severe problems out there, and we agree that there are. At the same time, we would like to look at this in a picture of where we have come from. I want this committee to understand that while we are concerned about these problems, we believe these problems themselves are going to be worked out in a period of time, as we can get the stability. The way we feel stability can be maintained is by the act being left intact for this period of time.

Senator **Warner**. For what period is that again?

Mr. **Grandis**. For the current period. We feel, quite frankly, the States will have not received the adequate staffing or the technical support that they dearly need, and we agree with that.

Senator **Warner**. What would be a reasonable period in your judgment prior to hearings commencing in Congress for the purpose of reviewing possible amendment?

Mr. **Grandis**. Senator, I think that is a very serious question and I would rather not give an answer off the top of my head. I am not trying to be devious.

Senator **Warner**. No; you have never been before me when I have been in committees.

Mr. **Grandis**. I think there are certain parts of the act that should be looked at in the context of themselves, and I think that what we need to do is have a more serious discussion and more hearings to flush out, like you are doing today, where problems seem to be, and then the committee to go back and review which areas should be worked on first. I think it is a mistake for all of us to say let's reopen Public Law 95-87 at any point. I think that such as the Indian land situation, that does not really impact Virginia, but that is a very serious problem in the West. I think that there has been a very serious attempt to correct that problem within the context of Public Law 95-87, by looking at generic legislation that would improve and enhance Public Law 95-87.

Senator **Warner**. Taking an example, and I don't indicate pro or con on the issue, but the definition of the small miner, there seems to be some plausibility in having that examined, whether it is 100-K tons mined or 250-K tons mined, whatever, something like that, whatever the limit is. There seems to me there are areas. We have this important contribution of the report submitted by the preceding witness. I won't pin you down at this time. You have been explicit in your view.

Would you like further time? At some point before this record is closed, will you consider making a submission, given that period of time?

Mr. **Grandis**. We can do that. If I could take 2 more minutes.

Senator **Warner**. Oh, yes.

Mr. **Grandis**. I heard the bell.

Senator **Warner**. I have interrupted you for 2 minutes. Not interrupted, but maybe contributed to your dialog.

Mr. **Grandis**. Turning to some specifics that were raised this morning, one is AML. We have worked very hard with the States and perhaps more than any other environmental organization we have worked very hard with the States to assure that the States receive what is rightfully theirs. We believe we went into this act and working for a compromise in this act with an understanding that the abandoned mines needed to be corrected, and we recognize the importance of title IV, so we have worked very hard every year, and in fact, the State of Virginia has benefited from the work we have done directly in testimony that my organization has made regarding AML.

On the other side of that coin, sir, is that at the same time the States have to do everything in our view to make sure that AML fees are collected. The State of Virginia is in a very sad situation because based on current mining, you are not having the amount of coal tonnage being developed today as you had 10 or 15 years ago. OK. Because of the economy and the situation of the coal industry.

Virginia is one of those Appalachian States that has severe amounts of AML lands that could benefit from these funds, yet we are not receiving back each year, in my view, a proportional percentage based on what some of our neighbor States, like Kentucky and West Virginia, because their coal production is so much greater.

The State of Virginia, to continue taking a position that it is not going to make them more responsible to collect AML fees, and yet to be coming to us in Washington every year and to your committee and saying we need more money, I think is not a responsible position. We will work with the State to get them what is rightfully theirs. We will work with them on the inventory problems as Danny Brown talked about this morning. At the same time, the State, we feel, has the responsibility to go after those companies that are delinquent.

Senator **Warner**. Let me ask you one last point here, if I might. I am concerned this morning about the threat of the coal industry being just emasculated by this imported coal. I cited Colombia as an example. You have obviously studied that situation.

Unless all of us pull together, you may be having a different view, whatever choice of words you want, moderate our position, reconcile our position or something, we end up with this combative relationship which is deteriorating the industry in such a way that it can't compete.

Mr. **Grandis**. Can I respond?

Senator **Warner**. Yes; I want you to respond.

Mr. **Grandis**. Quite frankly, I do not think the combative relationship that we have in the environmental community or citizens groups who live near mining sites and have concerns in the mining industry is eroding the coal industry. The surface mining law——

Senator **Warner**. I am glad you pointed that out. I didn't suggest it was a total, as I am well aware of the economics.

Mr. **Grandis**. I am glad you are clearing it up. The way you framed the question suggests Public Law 95-87——

Senator **Warner**. I have spent hundreds of hours with delegations from overseas to buy coal.

Mr. **Grandis**. We share your concern. As you know, our own organization works on the way to maximize coal production, to maximize the utilization of coal through new technology. John McCormick, in my own office, has testified before you recently regarding this issue.

Senator **Warner**. Yes; I introduced the bill with Senator Byrd of West Virginia this past week on that very subject, trying to explore the technology.

Mr. **Grandis**. I really would like to try to leave my friends here to understand that the coal economy does not hinge on the strip mining law, but the future of the coal industry in this country I believe does hinge on this and other laws that protect mine health and safety and the environmental protection and air and water quality.

Whether we like it or not, we have to recognize the problems. But the problems in the coal industry today are not based on environmental laws. It is a worldwide crisis that we went through with the energy situation. We are not exporting the coal that we could be exporting. There are problems with our ports, as you pointed out. There are problems with transportation to our ports. There are problems of trying to find new markets in Europe and in the Asian rim. There are a lot of isue that do not even touch the urface mining law. For the citizens to want to encourage coal mining in their regions and to live with the impacts of coal mining, we have to give them the assurance that we are going to have the quality of life after the coal mining ends.

Senator **Warner**. Let'se take Colombia, for example. I am getting so interested, I may make one of those very rare trips overseas.

Mr. **Grandis**. I hope you go to China, too, and see what is happening.

Senator **Warner**. I don't have to go to China. I have been there as a marine and I don't want to go back. My point is that as far as I know there is no law down in Colombia, and they have got wages far below any we would want to thrust upon our industry here, and those conditions I think directly impact on this industry.

Mr. **Grandis**. Yes. May I respond to that?

Senator **Warner**. Yes.

Mr. **Grandis**. Back in 1979, I believe, I wrote a letter to one of the chairmen of the House subcommittees that deals with this issue of coal operations, that deals with oversight and investigations, OK, of the House Interior Committee. That letter was directly aimed at the concern you have raised several times this morning. We at EPI are very concerned about the impact of coal mining in Third World nations and other nations around the world will have upon the ability of our coal to compete in that market. We are very concerned about that.

Senator **Warner**. What solution did you raise?

Mr. **Grandis**. I didn't raise a solution. I asked them to study it. I asked them to say, look, it is not being played in the press right now, but I sincerely believe that we by the year 2000 will find our own U.S. deveoped coal in this country competing with coal being developed by U.S. controlled companies in Australia, South America, China, and in the Asian rim. I think there is responsibility by U.S.

corporations that are mining in these countries to apply the same standards in those countries.

We cannot ask the people of this country to sacrifice their standard of living because corporate owners here are taking advantage of working conditions and environmental conditions in other countries to exploit those people. So if you are suggesting that we roll back on health, safety, and protection——

Senator **Warner**. Wait, easy does it! I am not suggesting that. I haven't made that suggestion. I was pointing out the problem.

Mr. **Grandis**. I am saying we have been recognizing this for more than just this hearing. We have been trying to get Congress to look at this. I am very glad you are doing this. I am very glad you are raising it. We can't ask the miners in this part of the world to have to roll back their health and safety.

Senator **Warner**. No.

Mr. **Grandis**. I am not saying you are suggesting it, but it is going to be examined. Those mine health and safety regulations do not apply in Australia. I have talked to corporate officials here in this country who have mining operations in Australia. They sort of smile, "Oh, no, we don't have the same standards there."

Of course, we don't know what the safety record is. "We don't keep those data."

Asking about environmental protection. "Oh, they don't have environmental protection down there."

So they say, "Do you know, we can mine coal in flat areas." Mostly it is flat areas, not so much mountain mining that I am familiar with. You may correct it.

Senator **Warner**. I think it is primarily flat areas.

Mr. **Grandis**. They are saying, "We don't have the same problems. The soils are different." Granted, I will respect that and I like to see technical data at some point, but what we need to do is not put the problem to the people in Appalachia on the Midwest saying, "Your job is threatened because of mining in other parts of the world."

We need first to collect the data. We need to see who is doing that mining, and I think you will find that a number of corporate owners that own and control these companies in this country, and I am not talking about the small operators——

Senator **Warner**. We know who we are talking about.

Mr. **Grandis**. I want to say for the record I think the small operators in Virginia and eastern Kentucky are between a rock and a hard place. They are not really competing with environmentalists, they are competing with the coal industry and they are competing with a marketplace that seems to fluctuate up and down. I really do have a lot of sensitivity toward the small operators, because they are their own owners and we want to support people being their own bosses.

Senator **Warner**. There are fewer and fewer of them.

Mr. **Grandis**. We do support that. To respond and sum up our concern about this worldwide mining, I really think it is a serious problem, not for today, but for the year 2000 and beyond.

Senator **Warner**. I think it is a serious problem today because in a very few years the market conditions are going to be such that these courageous small miners and large ones in this area just will not be put in a competitive position.

Mr. **Grandis.** We would like to work with you, if your committee is interested, in collecting data of where these companies are planning on mining and who these companies are, the kind of mining they are going to be doing. We are very much interested in the same information. To sum up——

Senator **Warner.** Sum up for the record, because you and I have talked for a long enough period at this time. We have access to one another in the nation's capital, where some of these other folks do not.

Mr. **Grandis.** I apologize.

Senator **Warner.** You don't have to apologize to anybody.

Mr. **Grandis.** On the NAS study——

Senator **Warner.** Go back again. I am going to have to ask you, what about this study? Go ahead and make a point, because that is the study——

Mr. **Grandis.** We have reviewed that study. We think the study was well written. We think there is some very good technical information that the public should examine. However, we don't find the findings and recommendations that the study comes out with in chapter 9 to clearly represent what we found the study to say. We found the study to say that in most instances the AOC provisions and the highwall elimination are sound provisions.

Senator **Warner.** In other words, you are suggesting that the data base does not support the conclusions?

Mr. **Grandis.** That is my reading of the study.

Senator **Warner.** Shorthand language.

Mr. **Grandis.** Yes, sir. And we feel that as we all know, this is a very emotional issue. Probably one of the most emotional issues in the act, and that we feel that the State of Virginia has made great progress in encouraging mining of previously mined areas, and a new direction of reopening older underground mines that we would like to see that situation continue, that we believe that the act really has helped to encourage, to maximize coal production in most areas where coal is left.

Senator **Warner.** I have to proceed on. Thank you very much.

Betty Wells, president of Citizens Organized Against Longwalling, from Radcliff, OH.

STATEMENT OF BETTY WELLS, PRESIDENT, CITIZENS ORGANIZED AGAINST LONGWALLING, RADCLIFF, OH

Ms. **Wells.** Senator Warner and members of the subcommittee, I am addressing problems on underground mining and implementation of the Surface Mining Reclamation Control Act.

I want to thank you for the opportunity to appear here today. My name is Betty Wells. I am a family farmer from Wilkesville, OH, and the president of our community group, Citizens Organized Against Longwalling, or COAL. With me is Mary Lou Mullins, a neighboring farmer, whose lands will soon be damaged from the mining.

I am here to bring to your attention the failure of the Office of Surface Mining to enforce the Federal surface mining law of 1977 to protect our homes and water supplies.

COAL was formed in November 1982 to bring residents of Vinton and Meigs Counties together in an attempt to prevent damage to their farms. After witnessing the destruction of buildings and all water sources at our neighbors' farms, the group immediately focused upon the longwall mining process. After long hours of research and study, COAL continues to view the longwall mining process as the cause of the severe damage to their farms.

COAL has stated from the beginning and continues to state that its goal is not to close down the Meigs mines. The members of COAL realize the important part that the mines play in the local economy. Rather, the goal of the group is to prevent damage to their farms. The research we have done convinces us that longwall mining, at least by the methods currently being used, simply is not an appropriate method of mining coal in Meigs and Vinton Counties. If the coal seam was not so near the surface, if the hills were not so rugged, if the water resources were not so fragile, then possibly longwall mining would be appropriate.

The loss of our water makes the damage to our lands irreparable. Our farms cannot be operated if our springs, ponds, wells, and streams dry up.

Despite the State and Federal requirements that extensive hydrological studies be conducted prior to issuance of a mine permit, Southern Ohio Coal Co. is presently longwalling under our farms without first determining the effects upon our water. We feel that this is both illegal and immoral. If the coal company actually wanted to treat us fairly, as it constantly proclaims, the company would insist that these studies be done before any further mining is performed. The fact that the company continues to longwall under our properties, with the permission of the Ohio Division of Reclamation, and of the Office of Surface Mining without the benefit of studies upon the impact on our farms, forces us into an adversarial position with the State, OSM, and with Southern Ohio Coal Co., which is a subsidiary of American Electric Power.

The members of COAL have been persistent in our efforts to get OSM and the Ohio Division of Reclamation to take active roles in protecting our land and water resources.

Among our efforts have been:

Testimony at two informal conferences concerning the pending 5-year mining permit with over 20 members testifying each time and submission of detailed written comments, of which I have brought several.

Testimony at House oversight hearings in Washington, DC last June;

The filing of a petition asking that our lands be declared unsuitable for all or certain types of mining;

Requests for inspections filed with both OSM and the division of reclamation;

Filing of Federal lawsuit seeking enforcement of the rule prohibiting mining within 300 feet of an occupied dwelling.

We have been forced to hire our own attorneys and geologists to seek enforcement of the laws which are supposed to be enforced by OSM and the State agencies. We feel these agencies' duties are to require compliance with the laws. Instead, it seems that the agencies see their roles as working with the coal industry in making sure that the laws and regulations don't get in the way of mining coal.

Despite all the deficiencies we have found in the permit application, originally filed a year and a half ago, the State and Federal agencies either amend the regulations or simply tell the companies to "fix" the applications. In the meantime, the mining and the damage continues, even without a permit.

Despite our efforts to enforce the sections of the law which prohibit mining in certain areas, we are told that since the law was passed after the mine was open on a few hundred acres, those sections of the law won't be enforced even though the longwall operations didn't begin until 3 years after the law was passed and will eventually cover 60,000 acres.

Senator WARNER. How many acres?

Ms. WELLS. 60,000 acres in southeastern Ohio.

The division of reclamation has indicated it is ready to approve Southern Ohio Coal's 5-year permit. This would authorize 5 years of longwall mining without any further efforts to minimize the future damage. Our consultant, Russell Boulding, predicts that not only will the damage continue, it will even worsen in certain areas. His findings are included in our written testimony being submitted today.

Although initial enforcement of the laws and regulations rests with the State, OSM in its oversight role must ensure that the State is doing its job. Despite all of the evidence presented to OSM, it continues to allow the Ohio Division to shirk its responsibilities.

Our homes and livelihoods depend upon our land and water. Under the 1977 act, OSM is mandated to regulate the surface effects of underground mining. The longwall mining being done beneath our lands is having devastating effects upon the surface. Yet virtually no action at either the State or Federal level is being taken to lessen those impacts.

We are submitting written testimony and information on these issues. We ask that these be incorporated into the record of this hearing and studied by the members of this committee.

Most of all, we ask for your assistance as the oversight committee on the operations of the Office of Surface Mining to require OSM to enforce the law and regulations and intervene when the State fails to enforce its regulatory program, to require OSM to responsively enforce the regulations on the surface effects of underground mining; and to ensure that OSM responds to citizens such as us who are making use of the public participation provisions of the 1977 act.

Thank you for your attention and assistance in these matters.

[Attachments to Ms. Wells statement follow:]

COMMENTS ON MEIGS MINE NO. 2

PERMIT APPLICATION NO. 262

SUBMITTED BY: CITIZENS
ORGANIZED AGAINST LONGWALLING
Box 107
Wilkesville, Ohio 45695

Betty Wells
Betty Wells, President

PART I

LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Question A(9) requires identification of holders of record of any leasehold interest in the property to be mined or affected by surface operations or facilities, indicating whether the held interest is of surface, coal or non coal rights.

SOCCO has provided no information here. OAC 1501:13-4-03 requires that information on all oil and gas leases in the area to be mined must be included.

The Addendum to Part 1, Item A(13)(14) and B(1)(2) gives incomplete information concerning notices of violation. This does not comply with the requirements of OAC 1501:13-4-03(D)(3).

In answer to questions D(4), D(6) and D(7), SOCCO maintains that it holds valid existing rights to conduct its operations. In D(6) and D(7) SOCCO contends that the requirements of O.R.C. 1513.073(D) do not apply because its operations existed prior to August 3, 1977.

Although Meigs Mine No. 2 opened in 1972, the longwall operations there did not begin until after August 3, 1977 and the restrictions of Sec. 1513.073(D) apply to those operations.

Although the application contains deeds showing the purchase of coal rights, those deeds do not constitute valid existing rights to conduct longwall operations under that land.

In response to Item D(10) the application states that no areas within the permit or adjacent areas are under study for designations as unsuitable for Coal mining operations.

In fact, the entire mine plan area is included in the Petition For Unsuitability filed by C.O.A.L. on March 4, 1983 and currently pending before the Reclamation Board of Review.

PART II

ENVIRONMENTAL RESOURCE INFORMATION

On page 2 of the Addendum to Part 2, Item B, SOCCO states: "As indicated in the cross sections, the Clarion coal seam lies at least 200 feet below land surface and in some areas, as much as 390 feet or more below the land surface." This statement is false. Three coreholes in the permit application show the Clarion seam less than 200 feet below the surface: A-312(113 feet), A-623 (175 feet) and A-687A (154 feet). This is a serious misrepresentation of the geologic data because the fact that the Clarion seam is as close at 113 feet of the surface means that the liklihood of adverse impacts of surface water hydrology are increased.

1501-13-4-13(C)(1)(c) requires that there be at least one test hole per 160 acres. For the five year mine area this works out to a minimum of 17 test holes (2750 acres/160). Descriptions of depth and classification of overburden is given for 22 test holes, which meets the minimum requirements of 13-4-13(C)(1)(b)(ii), but the permit application does not meet the other informational requirements for test holes. Attachment 13 states that subsurface water was not encountered while drilling the holes, yet none of the well log drilling reports in the permit application showed dry holes. A more accurate statement would be that water was not looked for in the holes. Rule 13-4-13(C)(1)(b)(i) requires location of subsurface water in the test holes. Unless all the test holes have been completely grouted after they were finished, it would be possible to go back and measure water levels in the test holes. This would provide important additional information of groundwater occurence and flow patterns in the permit area.

Question B(1) requires one attachment 13 for each 160 acres. SOCCO has submitted only three instead of the required seventeen.

Rule 13-4-13(C)(1)(b)(iii) and (iv) require data on pyritic content and potential alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined and analyses of the coal seam including total sulfur and amount of pyrite and marcasite. The permit application contains the analysis for stratum above and below the coal seam for only 11 test holes, 6 less than the minimum required in the rules. Coal seam data also is provided for only 11 test holes, and the required pyrite/maracasite percentages are not given.

Groundwater The narrative description of groundwater information also seriously misrepresents the data in the permit application in a manner that gives the impression that impacts of the mine on groundwater will be less than is likely to actually occur. Page 1 of the Addendum to Item C(1)(2)(3) states "As indicated in the geologic cross sections, the bottoms of the drilled water wells are separated from the Clarion coal by interbedded deposits of shale, sandstone and limestone, and thin coal seams. The separation varies from 100 feet to in excess of 310 feet." The base of the sandstone in corehole A-613 is less than 100 feet above the coal.

The depths to water bearing strata shown in the geologic cross sections are not representative of the well logs included in the application. The cross sections show water levels ranging from 36' to 110' below the ground surface. The wells not shown on the cross sections range from 60' to 168'. Six of the nine water well logs show a depth to waterbearing strata of over 170 feet and the deepest water bearing strata is 285 feet.

As before, SOCCO attempts to show that loss of groundwater in our area is minor. By using phrases such as "the meager availability: SOCCO suggests that we have very little water anyway. Yet we depend on that water for our homes and businesses. The effects of taking that water should not be viewed in the manner SOCCO suggests.

More extensive cross-sections and preparation of fence diagrams are needed to obtain a three-dimensional picture of the geology and groundwater hydrology of the permit area.

The permit application fails to adequately identify known uses of groundwater in the shadow area as required in 1501-13-4-13(D)(1)(c). Of particular importance is identification of the extent to which groundwater is used to water livestock. This is needed to evaluate the impact of damage to groundwater resources and to identify the kinds of alternative water supplies that might be required.

Hydrologic Determination The Addendum to Part 2, Item E states "there should be no permanent adverse impact of the proposed mining on the hydrologic regime." To the contrary, the five-year permit area contains unusual conditions that mean there will be very serious adverse impacts on the proposed hydrologic regime and existing water supplies.

The Addendum further states "due to the impermeable nature of the majority of strata underlying this area, very little precipitation enters the ground." This is not true. The soils that cover the bedrock are permeable and the perched water table that develops at the base of the soil is an important source of water for plant growth. The area has an unusual number of springs. These are fed by water that infiltrates into the soil and bedrock, and are important sources of baseflow for surface streams in the area.

The Addendum also states "there is a small percentage of drilled wells utilized for water supplies." Data in the application show that 54 out of 88 primary sources of water (16 percent) identified in the water supply inventory are groundwater. An additional 11 percent of the primary sources are surface water and less than a third (27 percent) of the primary sources come from public water supply.

The Addendum also states "Due to the nature and thickness of separation (of water sources from the mining) no permanent adverse impacts is expected." This conclusion is not supported by data in the permit application. As noted above, the sandstone aquifer in the area lies within less than 100 feet of the Clarion coal seam in parts of the mine plan area. In these areas, the zones of increased secondary permeability over the coal and increased secondary permeability near the surface could be expected to intersect and massive dewatering of perched aquifers and surface waters could be expected. Furthermore, dewatering of near surface aquifers, and springs have already been observed in the mine plan area where distance from the coal seam exceeds several hundred feet.

The Addendum states "Any surface cracks that may occur as a result of subsidence are generally of a very shallow depth. Because these cracks are shallow, should any "interruption" to surface water flow occur, it will be restricted to a short segment of the stream." In some areas this may be true but the streams with greatest surface flow in the Raccoon Creek Basin portion of the mine plan area are also those that are closest to the coal seam. In these areas surface drainage can be expected to be lost entirely underground.

Other adverse impacts on the hydrologic system that can be expected, but are not mentioned in the application are (1) permanent dewatering or reduced yields of drilled wells, dug wells and springs, (2) contamination of wells and springs with bacteria where septic tank drainage fields are located near water sources, and sediment in other areas, (3) damage to Leading Creek Water District water lines, and (4) reduced surface stream flows in the Raccoon Creek watershed which would hamper the ability of these streams to dilute that main stem of Raccoon Creek which is one of the most seriously affected streams in Ohio by acid drainage.

Alternative Water Supply The Addendum to Part 2, Item F(1)(2) states "in general, the proposed mining operation will not result in the contamination, dimination, or interrpuption of underground or surface water sources of water supplies." This statement is insupportable in light of experience in the mine area to date. Groundwater supplies are so sensitive to disturbance that test hole drilling and normal room and pillar mining have diminished groundwater supplies.

This Addendum States "Because springs and seeps for dug wells are part of a relatively shallow flow system, the mining should have very little or no effect. Surface cracking as a result of subsidence is generally of a very shallow nature and any interruption to surface waters should be limited to a short reach of a stream. An alternative water supply source is therefore not considered to be necessary." As discussed under the hydrologic determination the first two statements are inaccurate, and consequently the opposite conclusion as required: alternative water supply will be required.

Finally, the Addendum states, "If a source was required, a spring, drilled well, dug well, pond, or Leading Creek Rural Water could serve as an alternative water source." Dug wells are unlikely to be a viable alternative water source, since it is the near surface aquifers that are most seriously and irreversibly disrupted by subsidence. Springs may become reestablished at lower levels, and deeper drilled wells may be possible, but it will take a number of years for the post-subsidence groundwater flow system to stabilize to the point where alternative springs and drilled wells could be developed as reliable water sources. Ponds which have been sealed or hauled water are the only viable alternative water sources until residual effects of subsidence are completed. After residual effects are completed Leading Creek water could serve as an alternative for domestic use where the cost of laying lines is not prohibitive, but rural water would not be suitable to livestock use because of its expense. All of the alternative water supplies proposed will be more expensive than current water supplies in the area.

Based on experience to date in the mine area, a very large percentage of existing water sources will be damaged by mining. Consequently, the application should include an alternative water supply evaluation of each household in the area that (1) indicates what alternative water supply will be provided until residual subsidence effects are complete, (2) identifies the most likely alternative longterm supply and compares the cost of maintaining that supply compared to current supply and (3) where rural water is proposed an indication whether the users do, in fact, want rural water.

Climatological Information 1501:13-4-13(G) requires submission of climatological information, if required by the Chief. The August 1983 report by Groundwater Associates titled Hydrogeological Evaluation of Underground Mining Effect Near Quarto No 4 Coal Mine recommends that a precipitation station be established within 5 miles of the mine plan to assist in evaluating hydrologic impacts of the operation. This should be required for the Meigs No. 2 Mine area.

In Part 2, Items H and I, and Part 3, Items D,F and K, provide for a 101 area tract. Under the current definition of "affected area" the Chief is authorized to require information for the entire area to be mined. Only by requiring that information can the application process meet federal requirements. It is clear that federal regulations require land use information for the area above underground mine workings.

Volume 48, page 46305 of the Federal Register shows that approval of Ohio's new regulations was based upon the fact that information on land use, prime farmland, reclamation, stream diversion and transportation facilities would be required on the land above the underground workings.

At least two prime farm soils, Wellston and Tilist silt loams, are within the mine plan area.

PART III

RECLAMATION AND OPERATIONS PLAN

Use and Conservation of Coal Resources 1501:13-9-05 requires that "Coal mining operations shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in future coal mining operations is minimized." Where more than one coal seam can be mined, mining methods and layout need to take interactions between coal seams into account. The Winters and Ogan coal beds underly the Clarion coal seam and the No. 5 and 6 coal seams above the Clarion bed are strippable in parts of the mine plan area.

The permit application should address possible impacts of the mining method on future extraction of coal seams above and below the Clarion bed. Surface subsidence could be expected to make surface mining of upper coal beds more difficult. With room and pillar mining the best sequence to mine multiple seams is generally from top to bottom, (USBM IC 8849, Room and Pillar Retreat Mining Manual), but with longwall mining the opposite is true. According to USBM RI 8252 (Single Entry Development for Longwall Mining): "If pillars are left in seams, they transfer their loads to lower seams, and mining of a lower seam may become impossible because of the danger of the pillars 'punching' through the floor."

Protection of the Hydrologic Balance In Addendum to Part 3, Item E(1), SOCCO states, "to date, it had been determined that no permanent damage has been documented concerning the rights of present users of surface and groundwater in the permit and adjacent areas." In fact most of the damage to existing water supplies is irreversible.

Again the statement "no permanent adverse impact is anticipated on the quality or quantity of surface and ground water within the proposed permit and adjacent areas" is insupportable in light of factual data from the area and known principles of hydrology (see discussion of hydrologic determination).

As discussed under alternative water supply, the statement "Diminution of surface and ground water is very unlikely to occur" is entirely without merit.

In fact, it is quite apparent from the layout of the longwall panels that no special consideration has been given to the requirements in 1501:13-9-04(A) that "mining be planned and conducted to minimize disturbance of the hydrologic balance" and that "changes in water quality and quantity, indept to groundwater and in the location of surface water drainage channels shall be minimized."

Surface and Groundwater Monitoring Plan The Addendum to Part 3, Item E (5), the groundwater monitoring plan, is seriously deficient. The application states "For the groundwater monitoring phase of this recommended plan, resresentative drilled wells, dug wells, and springs will be involved. Because of the information obtained from the water supply inventory, it is not necessary to monitor all the groundwater sources in the area." All drilled wells, dug wells and springs that are used as a water supply should be monitored because (1) there is goon reason to believe that most of these groundwater sources will be subject to damage, (2) the data in the water supply inventory includes only a percentage of water sources and does not provide adequate baseline information. Under the proposed plan it would be possible for someone's well to be dewatered or contaminated, but because it was not sampled in the water supply inventory the coal company could avoid accepting responsibility.

The application proposes to monitor groundwater only at three month intervals which is entirely inadequate. Al water supply sources should be monitored in accordance with procedures recommended by Groundwater Associates in the Quarto No. 4 mine study. This would include at a minimum: (1) a pre-mine pump test, (2) monthly monitoring of water sources for a year prior to undermining, (3) weekly monitoring when the panel is within 500 feet and until it is 500 feet past the site, (4) quarterly monitoring thereafter.

In the Subsidence control survey, the Addendum to Part 3, Item I(1)(3), contains several statements which are unsupportable in light of what has already occurred by the mining. Included are:

a) damage to structures "should not be irreparable and should not cause use change."
b) "Subsidence will not result in irreparable damage to the surface."
c) "Reasonably foreseeable land uses will not have to be modified due to underground mining." and
d) "Lasting material damage to natural resources, i.e., streams, lakes, drainageways, is not anticipated."

Subsidence Control Survey The Addendum to Part 3, Item I(1)(3) is totally inadequate for several reasons: (1) it understates the geographic extent of possible damage to structures, (2) it does not adequately inventory and identify the pre-mine condition of structures, and (3) it understates the potential for damage to natural resources.

From the text it appears that SOCCO considers structures only directly over the longwall panels as susceptible to damage. In fact subsidence effects extend to areas over the support pillars in the entry ways. Up to 23 percent of total final subsidence results from hte overlapping effects of subsidence occurs over supported entryways.

Each individual structure that could be affected by subsidence should be identified and a site survey conducted of its pre-mining condition. Procedures for such structure surveys are well established.

The application contains a whole laundry list of "the effects of planned subsidence...if any effects at all occur." The following effects are understated or inaccurate:

1. "Planned subsidence with associated cracking is not expected to result in mixing of soil layers execpt possibly for some sloughing at the cracks..." There will certainly be sloughing at the cracks and large amount of soil could be lost down these cracks. In places where the soil is thin over bedrock, this could adversely affect soil productive potential.

2. "no damage to trees is anticipated..." Two types of damage to trees can be anticipated. First on steep slopes where trees have shallow rooting systems cracking and soil movement could easily uproot trees. Second, the perched water table above the relatively impervious bedrock could be damaged and water supply to trees reduced.

3. "no alteration in soil management practices is likely to be needed..." Several alterations in soil management practices may be required as a result of subsidence damage: (1) pastures with subsidence cracks are unsafe for livestock to graze and also for use of farm equipment, (2) sloughing at the edges of cracks will result in the loss of topsoil with reduced soil fertility at the surface, (3) flat areas on ridge tops in the zone of compression may suffer from poor drainage with adverse impacts on crop yields, (4) if cracks are filled with soil from other sources machinery used to fill and grade the surface will cause adverse compaction at the soil surface and (5) on ridgetops in the tension zone perched water tables are likely to be dewatered thus reducing the capability of soil to grow crops.

4. "any fracturing of the compact layer at 20 to 30 inches will likely increase rooting depth and available water to plants growing within a few inches of the crack..." Some increase inrooting depth may occur, but the effect of cracking is likely to reduce available water because of loss of perched water table due to increased secondary permeability.

5. "it is anticipated that there will be little effect on springs and seeps...wells...ponds and individual reaches of streams..." As discussed earlier, adverse effects can be anticipated on all these items.

6. "cracking may occur to structures but this will be preventable or repairable." In fact, the Jordan house was rendered uninhabitable.

Subsidence Control Plan The subsidence control plan is severely deficient in several respects: (1) the longwall panel layouts show no evidence of being designed to minimize damage to the surface, (2) important information necessary to predict the effects of subsidence is omited, and (3) some of the information given is of questionable accuracy.

In areas where surface damage is of particular concern it is well accepted engineering practice to modify the layout of panels to reduce damage. The highly symmertrical layout of Meigs Mine No. 2 panels indicates that no special consideration was given to surface features in the mine plan.

Some of the important data needed for subsidence prediciton is as follows: (1) angle of draw, (2) maximum subsidence, (3) subsidence coefficient, (4) width to depth ratio, (5) minimum radius of curvature, (6) height of severe fracturing of overburden above the coal seam (dome), and (7) location and percentage of competent overburden. The subsidence control plan provides only the angle of draw and a rough figure for a subsidence coefficient. Geologic data is contained in the permit application but its relationship to potential subsidence is ignored. Furthermore, the angle of draw that is given are ranging from 10 to 15 degrees, This does not fit at all with data on angle of draw compiled from other longwall mines in Appalachia. A value closer to twice that amount would be "normal", and if the actual angle of draw is higher, the zone of influence of the subsidence profile will extend much farther beyond the mined out area than the value given in the application would indicate.

In order to refine the accuracy of subsidence prediction at a particualr site it is necessary to gather systematic site specific data over actual undermined areas. The subsidence control plan has no provision for monitoring the ground surface effects of subsidence. At a minimum a program to measure the following should be instituted: (1) surface strain contours, (2) surface slope contours, and (3) mapping of surface cracks (location, orientation, length, width, depth and opening-closing sequence).

The application appears to violate quite clearly the prohibition against mining under or adjacent to any perennial stream unless detailed subsurface information shows that subsidence will not cause material damage to streams. No such detailed information is provided in the application.

The Addendum to Part 3, Item J(5) states "there should be no permanent adverse impact of the proposed mining on the hydrologic regime." That statement ignores what has actually occurred as a result of longwalling the past two years.

The members of C.O.A.L. feel that the permit application continues to have severe shortcomings and that it cannot be approved in its present form.

EVALUATION OF IMPACTS OF LONGWALL SUBSIDENCE AT MEIGS NO. 2 MINE

PERMIT APPLICATION NO. 262

March 3, 1984

SUBMITTED BY: CITIZENS ORGANIZED AGAINST LONGWALLING
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Hydrologic Impacts

The permit application (sections of the permit application relating to hydrologic and other impacts of subsidence are attached as Appendix 1) states that no significant hydrologic impacts are expected from the mine. Kostelnick (1982) in an investigation of four springs and two wells over a subsided longwall panel at the mine concluded otherwise:

> After reviewing the collected field data for the area of investigation and relating the areas's proximity to the Meigs #2 mine, it is obvious that surface subsidence has occured due to deep mining activities. Unconsolidated and consolidated formations have been altered by the subsequent fracturing and widening of existing fractures, and have resulted in turbidity increases in springs and ground-water diversion in Lavern Jorden's dug well. The full impact of such mining may not be realized for several years after mining has stopped.

> Warpage of the above mentioned fracture network has also diverted streamflow in the area and altered aquifer recharge zones. Developed springs are receiving contamination through new surface-to-ground-water channels, also increasing turbidity. (page 3).

An important question that needs to be answered is the extent to which the altered groundwater flow system will disrupt existing water supplies and can be used as a source of water supply after the area has stabilized.

Theoretical Considerations Figures 1 and 2 present two different models for the groundwater impacts of coal mine subsidence. Figure 1 shows fracturing to extend all the way from the mined out area to the surface, resulting in flow of surface and groundwater into the mine workings. Figure 2 shows three fracture zones: 1) the caved zone over the coal seam where there is increased secondary permeability, 2) an intermediate zone of slight or no change in permeability (called the aquiclude zone by Kendorski et al. 1979), and 3) a surface zone where extension fracturing also results in increased secondary permeability.

The two figures are not necessarily inconsistent. Figure 1 might be considered a special case of Figure 2, where the coal seam is near enough the surface that the upper and lower fracture zones intersect. Figure 2 indicates that the lower fracture zone may range in thickness from 30 to 60 times the thickness of the coal seam, and the surface fracture zone may extend to a depth of 50 feet. Where the two zones of increased permeability do not intersect, fracturing in the upper zone may cause water levels in near-surface perched aquifers to drop, but the aquiclude zone should prevent a complete dewatering. Where the two zones of increased permeability intersect, near-surface perched aquifers can be expected to drain into the mine workings and not recover after subsidence occurs.

In the Meigs No. 2 mine area, where the coal seam averages 4.5 feet thick, Figure 2 implies a depth range from 185 to 320 feet where the upper and lower zones of increased secondary permeability may intersect (30 to 60 times 4.5 feet plus 50 feet). However, studies of the impacts of underground mining on groundwater in Appalachia indicate that the thickness of the upper fracture zone may be even greater than the 50 feet shown in Figure 2. A photographic log of a 8-inch well over the Pittsburgh coal seam in Marshall County, West Virginia revealed fracturing to a depth of 100 feet below the surface (Hobba, Jr. 1981). If the upper fracture zone shown in Figure 2 is extended to a depth of 100 feet, then the maximum depth at which the upper and lower zones of increased permeability may intersect at the Meigs No. 2 mine area is increased to 370 feet.

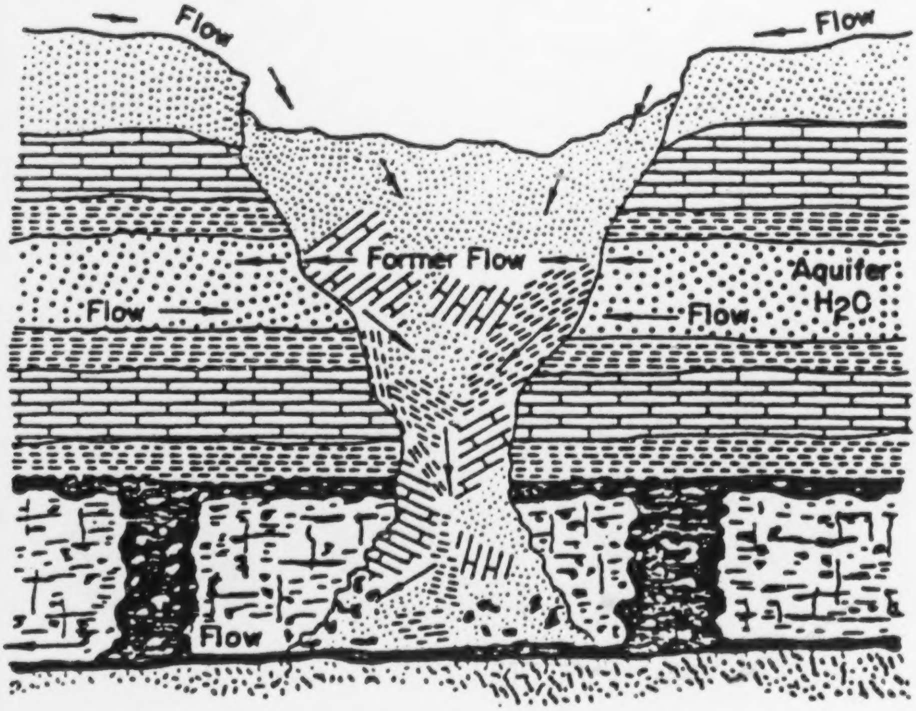


FIGURE I

INFILTRATION OF WATER
THROUGH SUBSIDED AREA

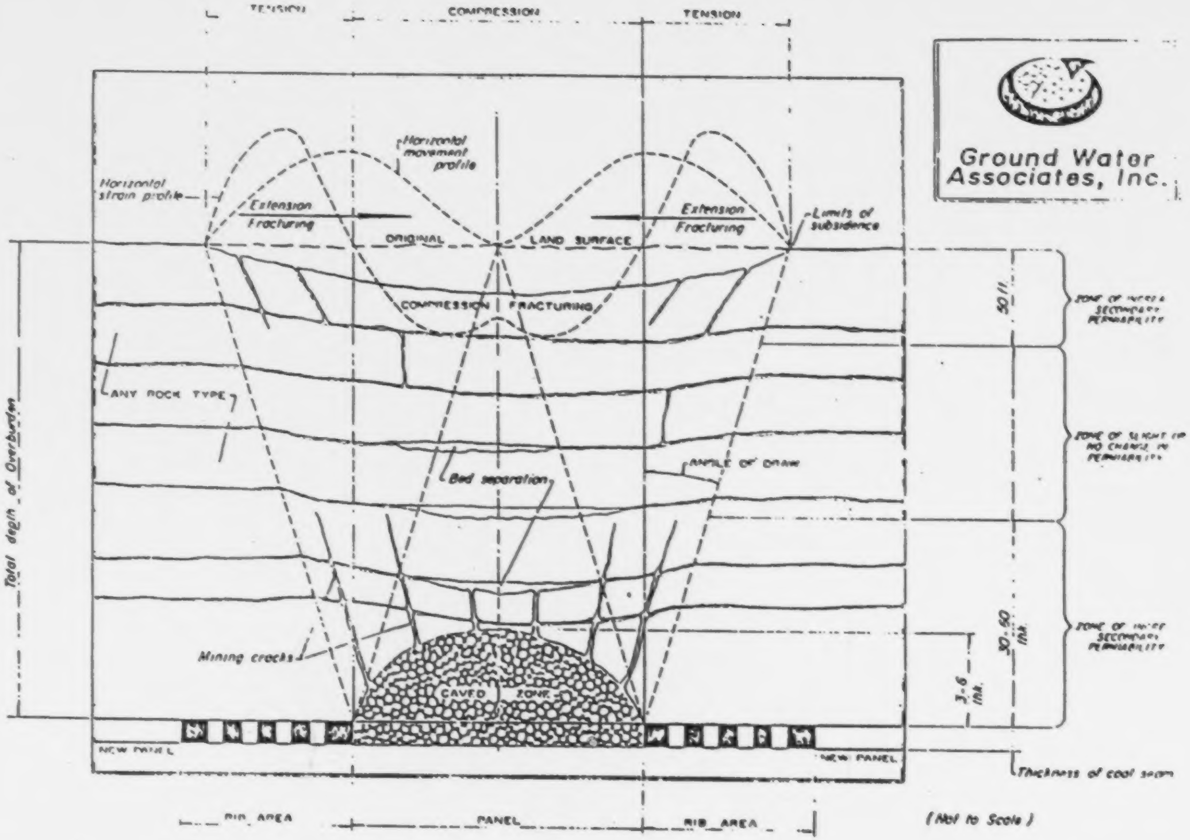


Fig. 2 - SCHEMATIC CROSS-SECTION THROUGH A MINE PANEL SHOWING THE POSSIBLE SUBSIDENCE EFFECTS OF LONGWALL MINING BASED ON ENGINEERING DATA.

Other data from Appalachia support a greater maximum thickness of high permeability between the surface and the coal seam than is shown in Figure 2. Wahler Associates (1978) observed good hydraulic connection between the surface and an underground mine that was 525 feet below the surface near Carrolton, Pennsylvania. In this case infiltration of water into the mine showed a rapid response to heavy rainfall at the surface.

Barla and Boshkov (1978) measured strata movement and water table fluctuations over a longwall panel at the Somerset Mine No. 60 in Pennsylvania and found the following: 1) the two water wells over the panel dropped from levels of 50 feet below the surface to more than 100 feet (beyond the depth of the water level measuring probe) and 2) fracturing extended more than 100 feet above the coal seam. A stream that lay about 360 feet above the coal seam began to flow into cracks that developed after the panel had subsided. Two lines of evidence indicate that the fracture zone extended the full 360 feet from the surface to the coal seam: 1) water was first reported at the face at the time of heavy rainfall and 2) approximately at the same time, the creek dried up by draining into the mine gob area.

Rauch (1978) in an inventory of water levels in domestic wells in Marion County, West Virginia found that there was a direct correlation between the extent of well dewatering resulting from underground mining and depth of mining. He found the following general relationship:

<200'	All well permanently dewatered.
200-250'	Most wells permanently dewatered.
250-300'	Some wells occasionally dewatered.
>300'	No wells dewatered.

The surface and groundwater resources in the Meigs No. 2 mine area range from less than 200 feet to about 380 feet above the proposed longwall panels. The above data from Rauch indicate that severe impacts on groundwater supplies can be expected at the Meigs No. 2 mine where depths are less than 250 feet. The experience at the Somerset mine seems to be more applicable to the Meigs No. 2 mine than Rauch's study for defining the maximum depth at which wells will be affected. Two lines of evidence support this:

1. Geologic conditions at the two mines indicate that similar or even more extensive fracturing can be expected at the Meigs No. 2 mine. Generally, hard strata (sandstone and limestone) are more susceptible to permeability increases resulting from fracturing than soft strata (shales and siltstones). Hard strata in the two boreholes at the Somerset mine ranged from 36 to 41 percent of the total thickness of the overburden. In the northeast longwall panel area at the Meigs No. 2 mine hard strata range from 43 to 57 percent of the

total overburden thickness (measured from cross-section CDEF in Zatezalo 1982). Since the Meigs No. 2 mine has higher percentages of hard strata, it is possible that fracturing from longwall subsidence could be more severe than occured at the Somerset Mine.

2. All wells and springs that have been affected by longwall mining at Meigs No. 2 to date have been at elevations exceeding 300 feet (the depth of no impact in Marion County, West Virginia). The dug well at the Don Jordon property where water levels dropped below the pump intake was about 380 feet above the coal seam, and the dug well at the Mark Spezza property where water levels dropped was about 350 feet above the coal seam.

Groundwater Problem Areas at the Meigs No. 2 Mine The above discussion has established that the relatively shallow depth and geologic characteristics of the Meigs No. 2 mine creates the *potential* for severe and irreversible effects on near surface groundwater resources. However, a hydrologic investigation of the Meigs No. 2 mine area by Burgess and Niple (1983), hereafter refered to as the AEP Hydrologic Report, concluded that:

> The probable future effects on the hydrologic balance due to longwall mining should be minimal based on the geology and hydrology of the area and the observed effects ovr the last 5 years.

This conclusion is based on the following findings: 1) on the basis of three springs monitored to date in the area there has been no diminished flow or no permanent change in the water quality, 2) minor declines in water levels in wells have been reported but lack of premining water level data prevents substantiation that declines are related to longwall mining, 3) observed streamflow losses into cracks reappear downstream so there is no problem, 4) since streams are subject to natural conditions resulting in no flow, losses of streamflow are not significant to the area's water resources, and 5) public rural water systems can replace any water supplies that may be damaged by mining.

Basically the AEP Hydrologic Report says that because surface and groundwater water supplies in the mine area are undependable and water quality often poor, effects that may occur from mining are not significant. The opposite is the case. Where water supplies and quality are marginal, small reductions in supply or quality have a much more significant impact than where supplies are abundant. Furthermore the AEP report greatly understates the potential future impacts. Flow at Allman and Dan Jordan springs were first measured only one week before the panel was directly in line with the springs. Both Groundwater Associates (1983) and Earla and Boshkov (1976) measured drops in water levels in wells as much as 6 weeks before longwall panels were directly under the wells. Without a year's monitoring data it is not possible to say whether spring flows have not been affected by longwall mining.

It seems inconsistent of the AEP report to conclude that there have been no effects on spring flow when there is no premining flow data, but to conclude that drops in water levels in the drilled well on the Laverne Jordan is not related to mining since data on water levels just before mining were not available. The explanation given for the drop is not convincing.

The greatest weakness in the AEP hydrologic assessment is that it is based on very limited data for locations where hydrologic impacts would be expected to be least. Longwall mining to date has been located in areas where the overburden has been thickest. Even at overburden thicknesses might be considered "safe" (greater than 300 feet) some hydrologic impacts have been observed. As longwall mining moves into areas where overburden is less thick, hydrologic impacts can be expected to become more extensive and severe.

In fact, there are other factors in the area that will tend to exacerbate the potential for adverse hydrologic impacts. These include 1) areas with poor roof conditions where the limestone that lies over the coal has been eroded and replaced by sandstone channels, 2) areas of weakness where lineaments evident from aerial photographs intersect, 3) areas of low topography and 4) areas of high transmissivity. These factors were identified by Zazetalo (1982) in a study of groundwater problems in the Meigs No. 2 mine area.

Zazetalo's study was undertaken in order to predict and minimize roof-control and water problems in the mine itself. However, the results of this study are equally applicable to evaluating adverse impacts of groundwater resources, since water problems in the mine will be directly related to dewatering of near-surface springs and wells. Figure 3 shows the existing and potential problem areas identified in the Zazetalo study. The maps that were prepared as part of this study were carefully reviewed according to the criteria that were used to identify potential problem areas and seven additional areas were found. These are marked with cross-hatches in Figure 3. Five of these new areas were rated a major problem areas (numbers 10, 11, and 13 contain one or more intersecting lineaments in topographic low points, and numbers 15 and 16 contain one or more intersecting lineaments in sandstone channel areas). The relationship between these problem areas and the proposed longwall panels will be discussed later.

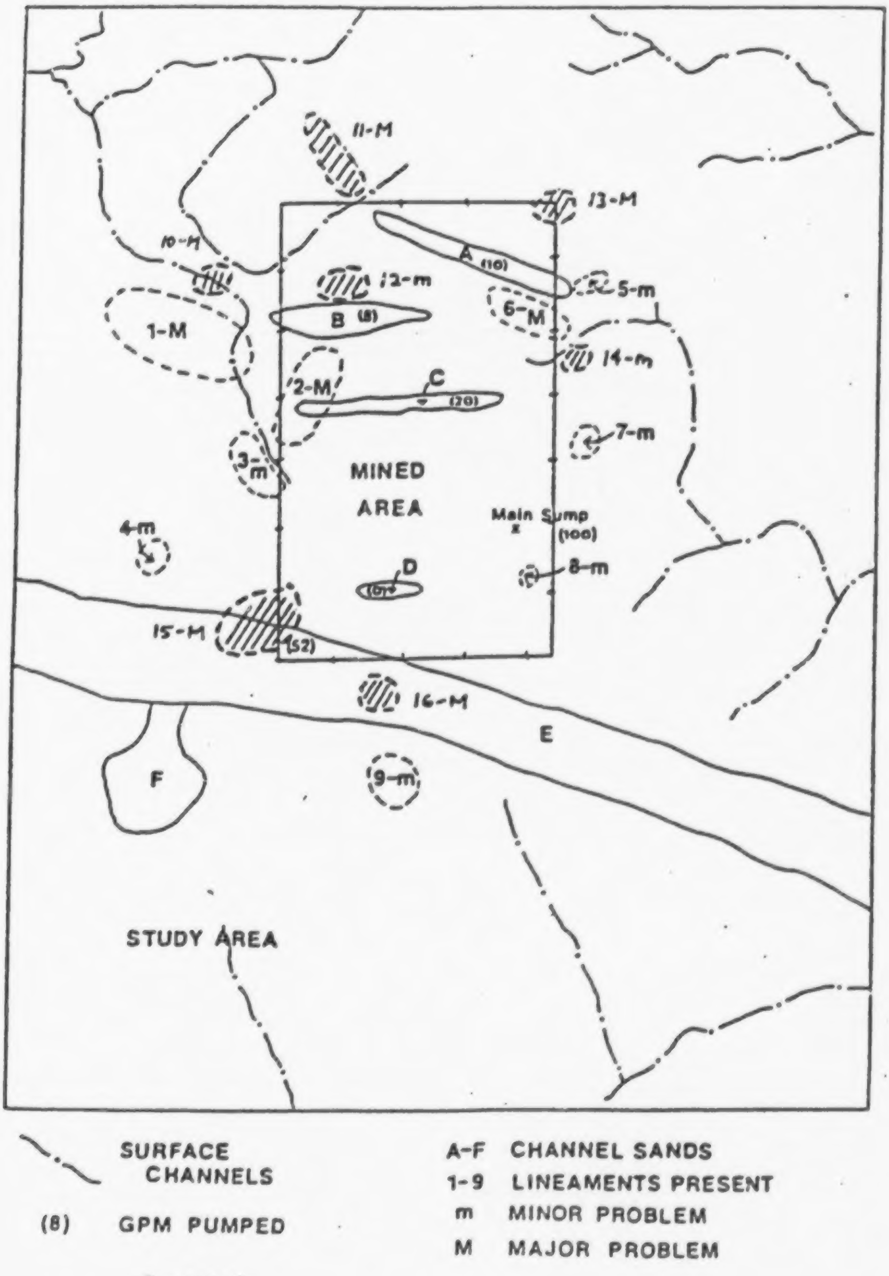


Figure 3 Groundwater Problem Areas, Meigs No. 2 Mine. (Modified from Zazetalo 1982).

Surface Water Problem Areas The permit application states that 200 feet is the minimum thickness of overburden in the five year permit area. However, the geologic corehole data accompanying the permit application showed one drill hole within the five year area with a depth of 154 feet to the Clarion #4A coal seam (A-687A), and two drill holes adjacent to the northwest side of the five year area with depths of 113 and 175 feet to the coal (A-312 and A-623 respectively).

Areas where the depth to the coal seam is less than 200 feet can be expected to experience severe impacts from subsidence for several reasons: 1) this is close enough to the surface that fracturing is certain to increase secondary permeability all the way between the surface and the mine area (Rauch, 1978, found that all wells within 200 feet of the coal seam were dewatered), and 2) these areas coincide with the location of major surface streams. Zazetalo (1982) recommended the areas directly under surface stream channels be avoided or that measures be taken to line the stream beds with impermeable material to prevent drainage into the mine.

Drainage of surface streams into fracture zones caused by longwall subsidence would represent a major disturbance of the hydrologic balance. The impact at this particular location would be more severe than is usually the case because streams in the northwest part of the proposed five year mine area drain into Racoon Creek. This is one of the most severely acid-drainage polluted watersheds in the state (Board on Unreclaimed Strip Mined Lands 1974). Runoff from the Meigs No. 2 mine area helps dilute acidity levels in the mainstem of the Creek. Consequently, diminished surface flows resulting from subsidence would have the effect of increasing acidity levels in downstream polluted segments of Racoon Creek.

Figures 4 and 5 show the areas where the thickness of overburden is less than 200 feet for the western and northeastern parts of the five year mine area. These areas were located by placing a topographic map over an elevation map of the Clarion #4A coal seam prepared by American Electric Power in 1966 and marking areas where the difference in surface elevation and the coal seam elevation equalled 200 feet. Significant areas in the western, northern and east-central parts of the five year mine area contain overburden thicknesses of less than 200 feet. The relationship between these topographic lows and the proposed longwall areas will be discussed in more detail in the section on subsidence prediction.

Alternative Water Supplies The AEP Hydrologic Report indicates that public rural water supply systems provide a more dependable source of water than existing surface and groundwater supplies with only minor water main extensions. The main problem with rural water as an alternative water supply is economic. Some households with only

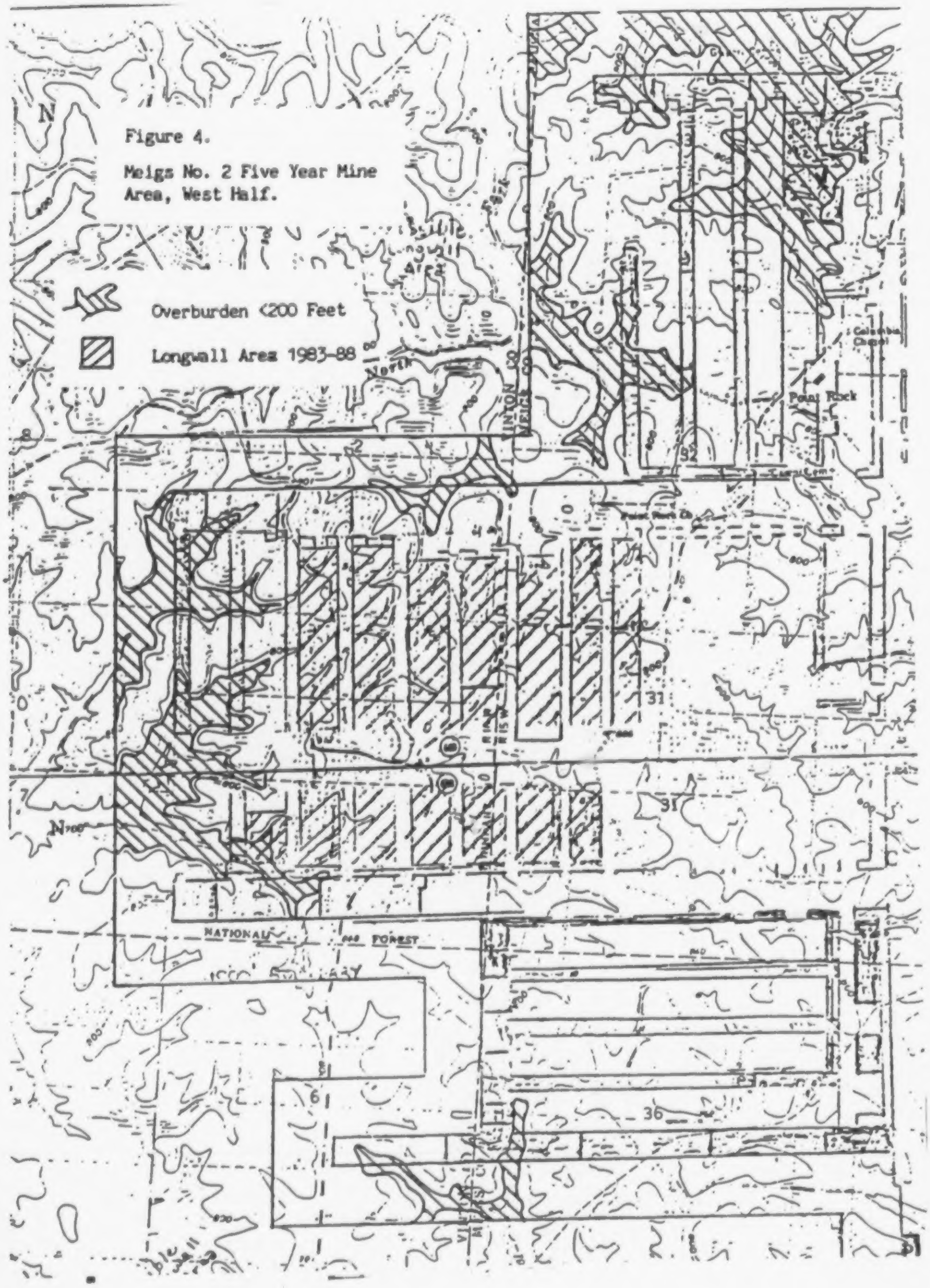


Figure 4.

Meigs No. 2 Five Year Mine Area, West Half.

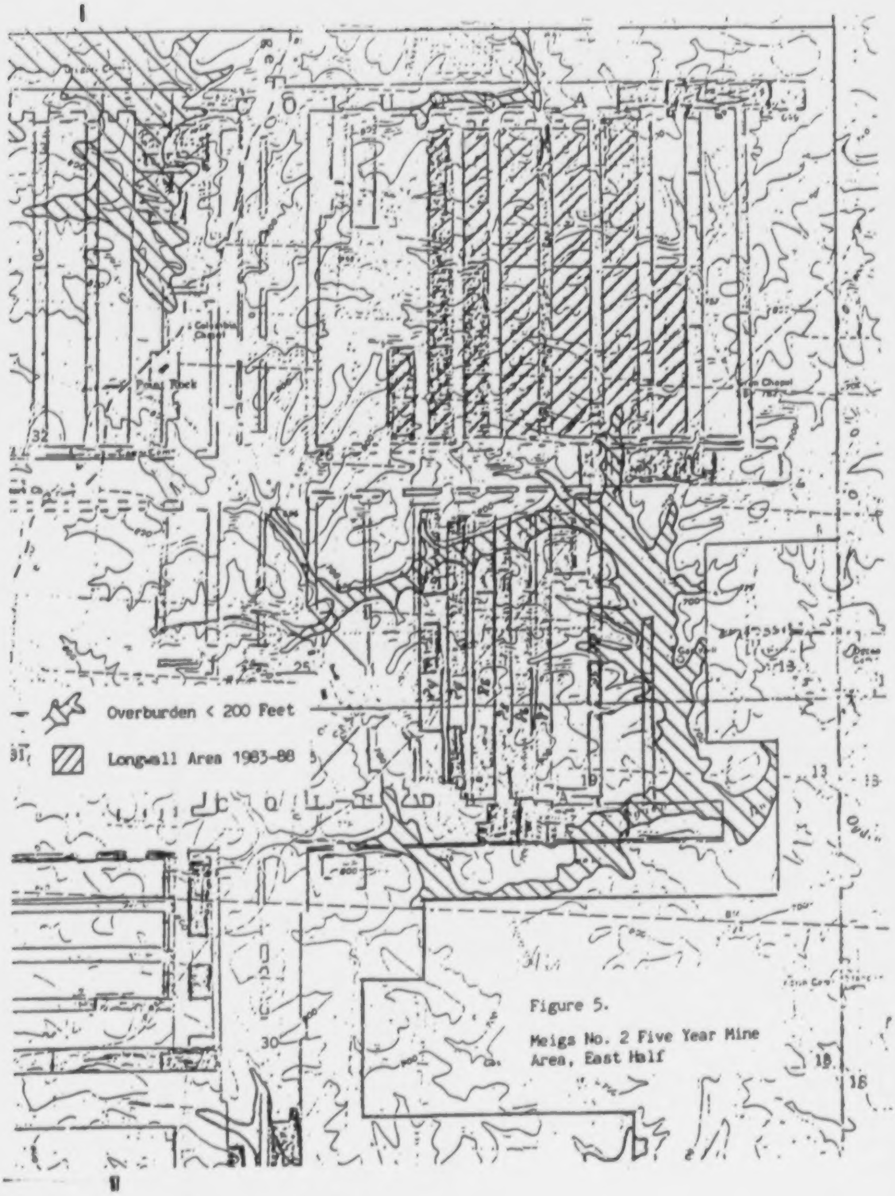


Figure 5.

Meigs No. 2 Five Year Mine Area, East Half domestic water needs may find this a desirable alternative, however where livestock and other farm uses must be supplied the cost would be prohibitive. Furthermore there are indications that when the Meigs No. 2 mine area is mined out, the cost of rural water would be prohibitive even for domestic use. Hoeflich (1983) states that the average water bill in the Leading Creek Water District is $18.43/month, but that if the Meigs mines stopped operating the average bill would increase to $46.07/month. Hoeflich further indicates that "people just couldn't afford that figure". It appears that the viability of rural water supply depends heavily on subsidization by the coal operator. When the area is mined out landowners will suffer two-fold: 1) the cost of rural water will be beyond the reach of many users and 2) where wells, springs, and ponds have been damaged their water supplies will be even less dependable than before mining.

Agronomic Impacts of Susidence

Himes (1983), hereafter refered to as th AEP Agronomic Report, presents the results of observations made by walking over a small corn field, adjcent woods, an orchard and a meadow near a road where subsidence had occured over a longwall panel at the Meigs No. 2 mine. This represented a very limited inspection of area affected by subsidence and contains no observations of actual effects of crop or tree growth. The report noted no damage to trees compared to unaffected areas and that after cracks close in the later stages of subsidence they are difficult to locate in densely vegetated meadows and woods.

It appears that observations were only made in subsided areas near the center of the longwall panel. Subsidence cracks are more longlasting where horizontal stresses are high at the edge of longwall panels. A field inspection of Mark Spezza's property on December 12, 1983, showed cracks in the soil a foot wide. This was more than a year after the area had been undermined. Uprooted and fallen timber has been observed at the Lavern Jordan property.

The AEP Agronomic Report concludes that there was no evidence that subsidence would alter soil management practices. This is because of the extremely limited nature of inspection. The cracks observed at the Mark Spezza property, and 30-inch cracks that have been measured in pastures at the Lavern Jordan property are of sufficient width to pose a hazard to farm machinery and livestock.

The Report also speculates that fracturing of soil layers that restrict water movement and root penetration would be beneficial to the plants growing near the fractures. The Monongahela and Latham soils are cited as examples of soils with compact layers that would benefit from fracturing. However, a review of the SCS 1938 Soil Survey of Vinton County, and soil maps in selected SCS Conservation

Plans prepared for farms in the Meigs No. 2 mine area indicates that occurrence of soils with restrictive layers are very limited.

A stronger case can be made that fracturing will reduce water available for plant growth. Fracturing allows more rapid infiltration of soil water beyond the reach of plant roots. Where bedrock is near the surface perched water tables may develop at the base of the soil that provide moisture during dryer periods in late summer. Fracturing would allow water to move quickly into the bedrock and result in less available water near the surface. Cultivated annual crops such as corn and small grains would would be especially susceptible to moisture stress resulting from fracturing. The mortality of apple trees at the Fitzpatrick property might also be explained by dewatering of a perched water table due to subsidence fracturing.

Hobba, Jr. (1981) in a comprehensive analysis of the effects on underground mining and subsidence in West Virginia concluded that subsidence generaly reduces evapotranspiration losses in a watershed. Evapotranspiration is the water in soil that plants return to the atmosphere. Since water is often the limiting factor for crop growth in areas where bedrock lies near the surface, as is the case in the Miegs No. 2 mine area, reduced evapotranspiration means less plant growth.

In summary, observed effects of subsidence on soils in the Meigs No. 2 mine area and shifts in infiltration/evapotranspiration relationships that have been observed in other underground mine areas allow two conclusions to be drawn: 1) Soil cracking in areas of highest horizontal stress (generally the edge of panels) will create conditions that are hazardous to both farm machinery and livestock and 2) fracturing throughout the subsided area may reduce soil productivity by allowing soil water to infiltrate more rapidly beyond the reach of cultivated crops.

Subsidence Prediction in the Longwall Areas

Given the damage to structures and water supplies that has occured to date over longwall panels in the Meigs No. 2 mine area, accurate prediction and mine layout to minimize impacts of subsidence is essential before the permit is approved. The permit application contains only sketchy information necessary for subsidence prediction, so only a preliminary analysis is possible at this point. However available data indicate that severe damage can be expected for a majority of the structures and water suplies in the longwall mine areas.

Theorectical Considerations Some of the important data needed for subsidence prediction include: 1) angle of draw (defines maximum extent of ground movement beyond the panel, 2) angle of break (defines the location of maximum strain at the surface, 3) the width to depth ratio, 4) maximum subsidence, 5) horizontal strains, 6) height of fracturing of overburden and 7) location and percentage of competent overburden.

Table 1 summarizes important data on the Meigs No. 2 mine. Values reported in the literature for other longwall mines (mostly in Appalachia) are also shown in this table. The data in Table 1 suggest the following:

1. The angle of draw (10-15 degrees) stated in the permit application is low compared to other longwall mines in Appalachia. Twelve degrees is the lowest angle of draw reported in the literature and Karmis et al. (1981) report that for width to depth ratios exceeding 1.2 the typical angle of draw is about 28 degrees.

2. The Subsidence ratio at the Meigs No. 2 mine (.67) is at the upper end of ratios observed in Appalachia, although well below the ratio predicted in the National Coal Board's Subsidence Engineers Handbook. The lower than predicted value is consistent with other observations in Appalachia and seems to be related to the relatively high proportion of hard strata in the overburden compared to Britain. The high subsidence ratio is probably related to the fact that the Meigs No. 2 mine is not very deep.

3. Predicted maximum strains on structures in the Meigs No. 2 mine areas all fall within the severe to very severe damage classes identified by the National Coal Board. This is consistent with damages that have been observed near the edge of subsided panels in the area. The relatively shallow depth of the coal seam contributes to this problem. Brauner (1973) has noted that strain, slope and curvature (the major factors determining extent of structural damage) all tend to increase with shallow depth. The higher strains at 200 feet of overburden compared to 300 feet shown in Table 1 illustrate this.

Before examining specific impacts of the proposed longwall panels at the Meigs No. 2 mine one more factor needs to be discussed: interpanel subsidence effects. Peng and Cheng (1981) have noted that up to 23 percent of final subsidence results from overlapping effects in adjacent panels. Choi and McCain (1979) reported that subsidence at an active panel can result in ground movements in two adjacent mined out panels. The Meigs No. 2 permit application totally ignores this effect. The "predicted" subsidence area is the cross-hatched area directly over the longwall panels in Figures 4 and 5.

Table 1. Meigs No. 2 Mine Data Compared to Other Areas In Appalachia.

Characteristic	Meigs No. 2	Other Mines
Angle of Draw (degrees)	10-15	15-35 (Peng and Cheng 1981)
		21-35 (Kohli et al. 1981)
		12-34, W/D>1.2 = 28 (Karmis et al. 1981)
		12-32 (Von Schonfeldt et al. 1980)*
Coal and Overburden		
Coal	4.5'	
Average Depth (D)	270'	
Range	113-391'	183-213' (Von Schonfeldt et al. 1980)
		215-800' (Tandanand and Powell 1982)
Hard Strata (%)**	43-57	50-55 (Von Schonfeldt et al. 1980)
		15-42 (Tandanand and Powell 1982)
Longwall Panels		
Panel Width (W)	675'	
Panel Lenght	5000'	
W/D (Average)	2.5	
W/D (Range)	1.7-6.0	.56-.74 (Von Schonfeldt et al. 1980)
Subsidence Ratio	.67 (85-.90)***	.35-.47 (Von Schonfeldt et al. 1980)
		.22-.70 (Kohli et al. 1981)
		.29-.78 (Tandanand and Powell 1982)
Strain ****		
+E (300')	.013-.0325	
NCB Damage Class	Severe-Very Severe	
+E (200')	.020-.050	
NCB Damage Class	Very Severe	

* Three mines in West Virginia.

** Thickness of sandstone and limestone divided to total thickness.

*** Range in parentheses is calculated from nomograph in Figure 3, Subsidence Engineers Handbook (National Coal Board 1975).

**** Horizontal strain (+E) calculated from Subsidence Engineers Handbook for overburden depths of 200 and 300 feet (the range for most structures in the Meigs No. 2 mine area) using the equation $+E=0.65(s/h)$, where $s=3'$ (4.5 feet times .67) and $h=$ overburden depth. This was increased by a factor of 2 to 5 to reflect the fact that geologic conditions in Appalachia create greater than predicted strains (Karmis et al. 1981). NCB damage class rating was determined assuming an average structure length of 10 meters.

The angle of draw is the critical factor affecting interpanel subsidence. Figure 6 illustrates the effect of different angles of draw at the Meigs No. 2 mine where overburden is 300 feet thick (most structures over proposed longwall panels in the western and northeastern longwall areas are at about this thickness). If the angle of draw is 10 to 15 degrees as indicated in the permit application, then no interpanel effects would be expected. However if the angle of draw is 28 degrees, then about 60 feet of the ground surface in the center of the rib area would be affected by subsidence from both panels. If the overburden thickness increases to 350 feet then about 155 feet of the ground surface over the rib area will be affected by subsidence in both panels.

For purposes of subsidence prediction a range from 10 to 28 degrees should be used to evaluate potential impacts of subsidence. The upper range of 28 degrees is used for planning purposes when precise measurements are not available (personal communication, M Karmis, Department Mines and Mineral Engineering, Virginia Polytechnic Institute and State University, Blacksburg, February 9, 1983). The permit applicant has not carefully monitored subsidence over longwall panels that have been mined to date so there is some question concerning the accuracy of the stated 10 to 15 degree angle of draw. Even if it has been observed in some areas, it is not necessarily applicable to the entire area. Wade and Conroy (1980) measured angles of draw ranging from 14 to 30 degrees in a single longwall panel.

Within the range of 10 to 28 degrees for angle of draw, maximum curvature and stresses would be expected anywhere from the area directly over the edge of the panel to approximately 100 feet away from the panel over the rib area. With this data in mind it is now possible to make some general observations about the impact of the proposed longwall panels at the Meigs No. 2 mine.

Longwall Subsidence Impacts: Problem Areas Figures 7 and 8 show the locations of the proposed longwall panels in the western and northeastern sections of the Meigs No. 2 five year mine area. Refer to the cross-hatched areas in Figures 4 and 5 for the panels that are proposed to be actually mined in the next five years. The following additional information is also located on these figures: 1) potential groundwater problem areas (see Figure 3), 2) areas where overburden thickness is less than 200 feet, 3) location of houses (taken from USGS topographic maps) over and near longwall panels, 4) location of springs, wells and ponds over and near longwall panels, 5) location of proposed surface water monitoring points, 6) location of gas wells and a gas pipeline that runs through the permit area.

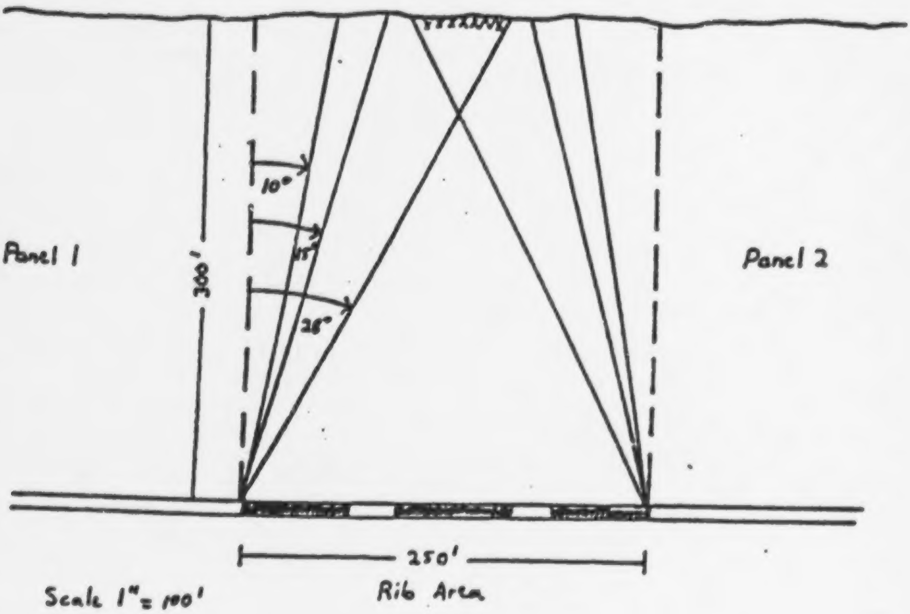


Figure 6 Subsidence Effects Over Rib Area as Influenced by Angle of Draw, Meigs No. 2 Mine Area.

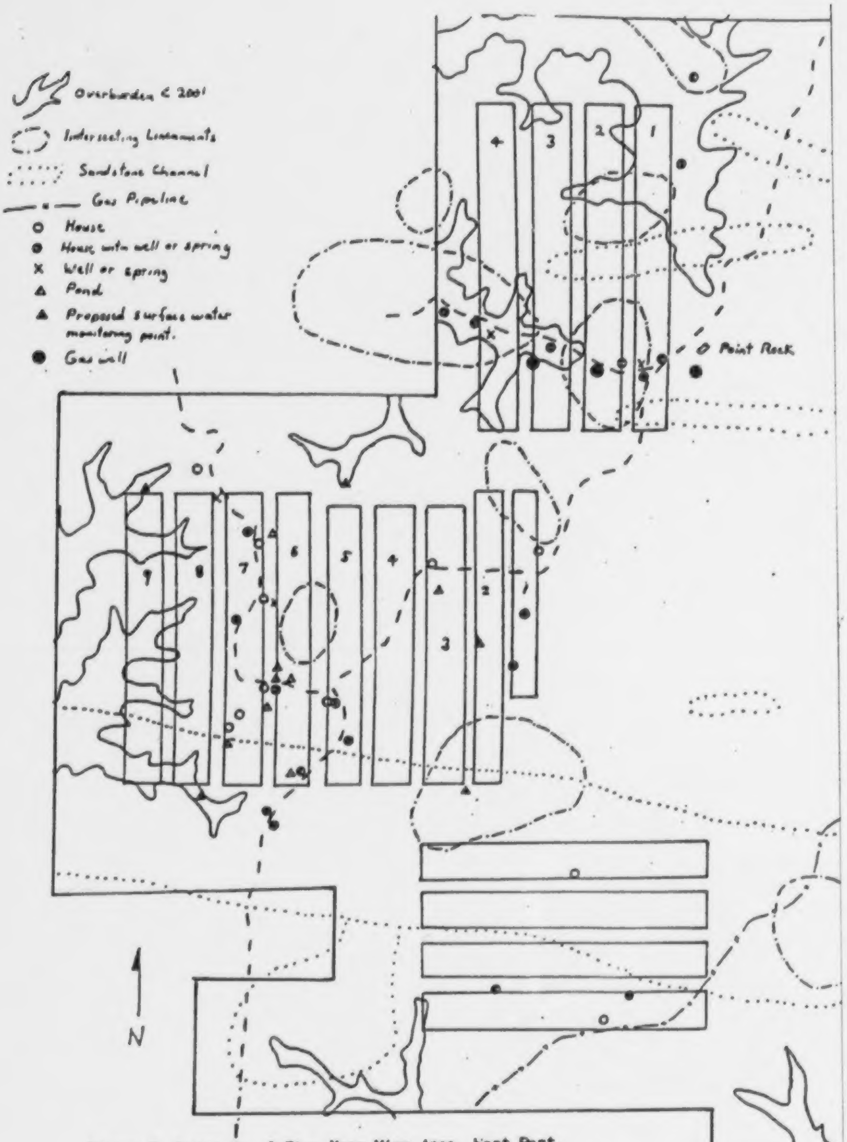
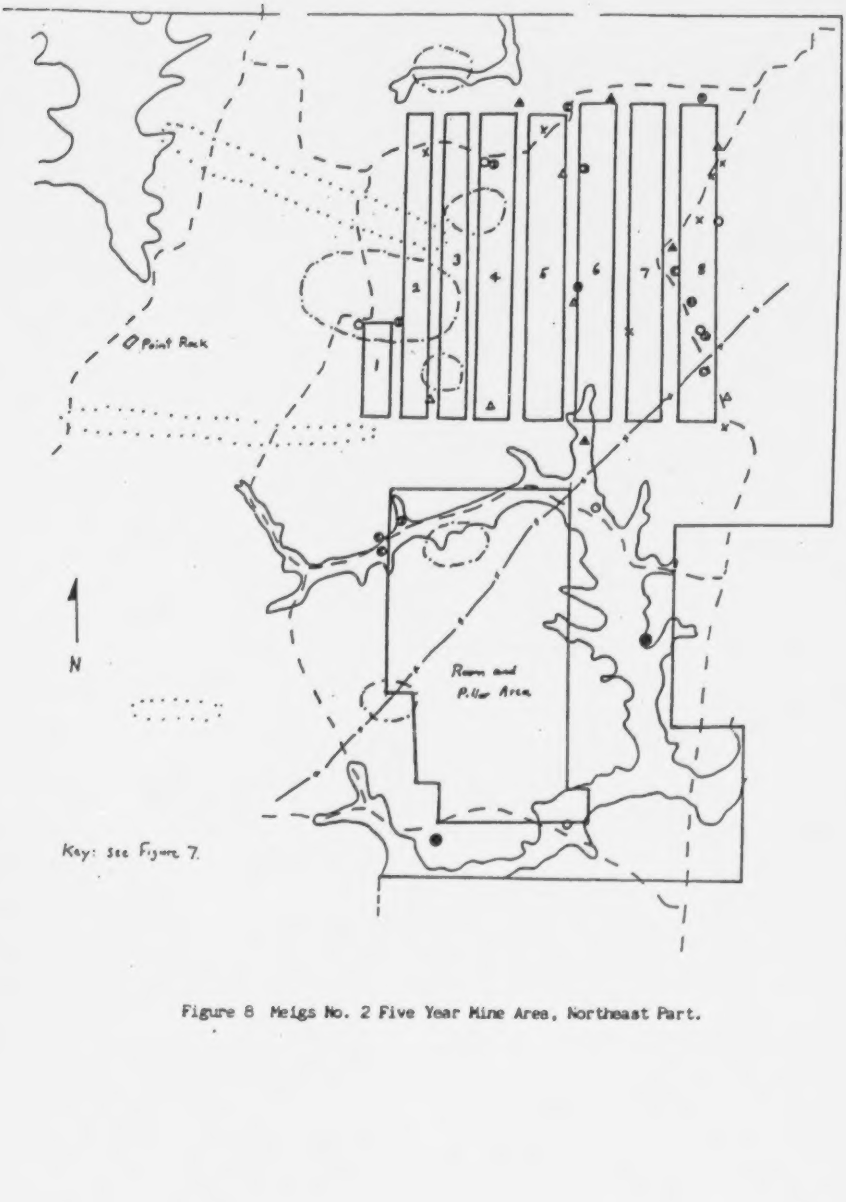


Figure 7 Meigs No. 2 Five Year Mine Area, West Part.



Key: see Figure 7.

Figure 8 Meigs No. 2 Five Year Mine Area, Northeast Part.

It is apparent from these figures that no special consideration was given to minimizing subsidence impacts in the layout of the panels. Peng and Cheng (1981) recommended that 1) panels be designed so that most structures are not located near the panel edges where permanent slope and strain exist and 2) the surface area above the remaining chain pillars between two mined out panels is a poor area to locate permanent structures because permenent tensile strain remains there. In the westcentral area, 11 out of the 16 structures (69 percent) are located near the edge of the proposed panels where damage is likely to be most severe. In the northeast area 9 out of the 14 structures (64 percent) are similarly situated.

Table 2 summarizes data on the number of houses (barns and other outbuildings are not included), wells and springs, ponds, gas wells and the length of rural waterline and gas pipeline in the proposed longwall areas. It is evident from an examination of Figures 7 and 8 that these structures are not evenly distributed over the longwall areas. To illustrate the effect of modifying the mining plan to reduce the extent to which surface structures are affected by subsidence, Table 2 also shows the number of structures that could be protected by excluding the areas where structures are most concentrated. About three-quarters of the houses, springs and wells and ponds are located in 24 percent of the westcentral longwall area and in 30 percent of the northeast longwall area.

Figures 7 and 8 show that all of the proposed longwall areas have potentially significant groundwater and surface water problem areas. The northwest area is especially problematic. It has large areas where the overburden is less than 200 feet, three areas of intersecting lineaments, two gas wells and a number of the houses are located in the creek bottom where stresses would be espcially severe. A sandstone channel also crosses three of the proposed panels. In the westcentral longwall area overburden is less than 200 feet in panels 8 and 9, the southern part of panels 2 to 9 are crossed by a sandstone channel, and panel 1,2,3, 5 and 6 contain intersecting lineaments. The first four panels in the northeast longwall area contain areas of intersecting lineaments and the southern part of panel 6 is less than 200 feet to coal. The southern part of panels 7 and 8 is crossed by a gas pipeline. The southern longwall area (not listed in Table 2, see Figure 7) is mostly within a large sandstone channel and is crossed by the gas pipeline in the southeast corner.

Table 2. Inventory of Surface Structures and Water Sources over Proposed Longwall Panels, Meigs No. 2 Mine.

Item	Westcentral Area		Northwest Area		Northeast Area	
	Total	Exc.*	Total	Exc.*	Total	Exc.*
Houses	16	12 (75)**	6	5 (83)**	14	11 (79)**
Springs, Wells						
Total	10	7 (70)	7	6 (86)	17	13 (76)
To be monitored	12	-	-	-	6	-
Ponds	9	7 (78)	-	-	6	3 (50)
Rural Water	7000'	2500' (33)	-	-	-	-
Gas Wells	-	-	2	2 (100)	-	-
Gas Pipeline	-	-	-	-	2000'	1500' (75)

* Possible longwall exclusion area. In the westcentral area this includes the south half of panels 5 and 6 and all of panel 7 (24 percent of total longwall panel area). In the northwest area this includes the south half of panel 4 and the south third of panels 1,2 and 3 (37 percent of total longwall area). In the northeast area this include the north third of panels 4,5 and 6 and all of panel 8 (30 percent of total longwall area).

** The number in parentheses is the number of items in the possible exclusion area as a percentage of total number of items in all the longwall area.

Summary and Recommendations

In summary, a combination of factors appear to make the hydrologic and other effects of subsidence particularly severe in the Meigs No. 2 mine area. Relatively concentrated rural residential development in certain areas, coupled with a dependance on surface and near surface water supplies that are highly susceptible to damage by subsidence associated with longwall mining require careful mine planning and layout. The presence of sandstone channels, areas of thin overburden and intersecting lineaments are other conditions in the area that create potential adverse impacts on the hydrologic balance.

Larger scale maps than were available in the permit application are necessary to evaluate site specific impacts, but available data indicate that the proposed longwall panel layout will create unnecessarily severe impacts on surface structures because a disproportionate number are located near the panel edges where stresses can be expected to be highest. Impacts on surface hydrology can be expected to become even more severe as mining proceeds to areas of thinner overburden in stream valleys in the northern and western parts of the mine area which drain into Racoon Creek.

Approval of the permit should only occur if the following are implemented:

1. A complete inventory of occupied and unoccupied structures should be made and their location pinpointed on more detailed maps and their relationship to predicted subsidence profiles identified. Modifications of panel layout should be considered to minimize surface damage. Structures over rib areas should be evaluated for potential interpanel subsidence effects.

2. A systematic subsidence monitoring plan should be developed, including a) surface strain contours, b)surface slope contours, and c) mapping of surface cracks (location, orientation, depth, width, and opening-closing sequence) in order to refine techniques for predicting subsidence in the mine area. The permit application contains no such plan.

3. Hydrologic monitoring procedures recommended by Groundwater Associates (1983) should be implemented. For each water supply source this includes: a) a pre-mine pump test, b) monthly monitoring of water sources for a year prior to undermining, c) weekly monitoring when the panel is within 500 feet and until it is 500 feet past the site and d) quarterly monitoring thereafter. The proposed plan falls far short of this. Less than half of the springs and wells in the northeast

longwall panel area are proposed to be monitored (see Table 2). The proposed surface water monitoring sites in the northeast longwall area appear to cover all major surface streams draining the area (see Figure 8). However, proposed surface water monitoring sites in the westcentral longwall area do not provide adequate coverage (see Figure 7). One of the sites actually lies upstream from the longwall area. Two or three sites should be added to streams draining the western end of the area.

4. Finally serious consideration should be given to not mining at all certain areas where several factors combine to create especially adverse conditions for mining and surface subsidence impacts. The southern part of the northwest longwall area and concentrations of residential structures identified in Table 2 would be a candidates for this in the five year mine area.

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Addendum to Part 3, Item E(1)

Southern Ohio Coal Company - Meigs Mine No. 2

Reclamation Plan - Protection of Hydrologic Balance

(1)(a) Sediment ponds are constructed to minimize siltation effects on the quality of surface water system within the permit area. Also, areas where toxic water would be created are maintained and their effluents are chemically treated to eliminate undesirables. After mining, the area will be revegetated as required and the refuse disposal area sealed. The quality of surface and ground water in the permit and adjacent areas will be monitored. An acid water treatment facility (A.M.D. Plant), utilizing NaOH (caustic soda) as a neutralization agent, capable of treating 300± gallons of water per minute, has been constructed and is utilized to treat affected water.

(b) To date, it has been determined that no permanent damage has been documented concerning the rights of present users of surface and ground water in the permit and adjacent areas.

(c) As indicated in the information presented with Part 2, Items B, C, D, and E of this application, no permanent adverse impact is anticipated on the quality or quantity of surface and ground water within the proposed permit and adjacent areas from the mining operations. Monitoring of both the surface and ground water will be performed in the permit and adjacent areas to ensure the protection of these waters. The monitoring that has been conducted at Meigs Mine No. 2 in the past, in conjunction with the surface operations, will continue. Also, additional monitoring as recommended below in Item (6) will be conducted with the approval of the Chief.

(d) Diminution of surface and ground water is very unlikely to occur. Alternative sources of water are described in the Addendum to Part 2, Item F(1) and (2).

Appendix 1. Hydrology and Subsidence Related Assessments in
Meigs No. 2 Permit Application.
Addendum to Part 2, Item E

Southern Ohio Coal Company - Meigs Mine No. 2

Hydrologic Determination

On the basis of the information submitted with Part 2, Items B, C, and D of this application, there should be no permanent adverse impact of the proposed mining on the hydrologic regime. This is based on the geologic and hydrologic conditions encountered in the permit and adjacent areas.

The ultimate source of the fresh water in the hydrologic cycle is precipitation. As indicated in Part 2, Item G, the precipitation remains fairly constant and averages 40.65 inches per year. The proposed mining will have no effect on the precipitation or inflow to the cycle.

Due to the impermeable nature of the majority of the strata underlying this area, very little precipitation enters the ground. The availability of ground water is therefore quite limited and there are no major aquifers present. As stated in the information presented with the water supply inventory, there is a small percentage of drilled wells utilized for water supplies. The depth of these wells is such that as much as several hundred feet of primarily impermeable strata separate the base of these wells from the mining operation. A further separation exists between the actual coal mining and the dug wells and springs. Due to the nature and thickness of the separation, no permanent adverse impact is expected.

Any surface cracks that may occur as a result of subsidence are generally of a very shallow depth. Because these cracks are shallow, should any "interruption" to surface water flow occur, it will be restricted to a short segment of the stream. The effect of these surface cracks on ponds would be such that sealing of the cracks would eliminate any permanent impact.

Addendum to Part 2, Item F(1)(2)

Southern Ohio Coal Company - Meigs Mine No. 2

Alternative Water Supply Information

Based on the information presented with Part 2, Items B, C, D, and E of this application, it is felt that, in general, the proposed mining operations will not result in the contamination, diminution, or interruption of underground or surface sources of water supplies. The impermeable nature of the majority of the bedrock units in this area prevents the downward movement of groundwater and, therefore, the availability is very limited. There are no formations considered as aquifers and the only groundwater developed is from minor water producing zones.

The information obtained from the water supply inventory indicates that a significant number of residences rely on the rural water supply system as their source and no impact from the mining can be expected for these users. Because springs and seeps for dug wells are part of a relatively shallow flow system, the mining should have very little or no effect. Surface cracking as a result of subsidence is generally of a very shallow nature and any interruption to surface waters should be limited to a short reach of a stream. An alternative water supply source is therefore not considered to be necessary. If a source was required, a spring, drilled well, dug well, pond, or Leading Creek Rural Water could serve as an alternative water source.

Addendum to Part 3, Item E(5)

Southern Ohio Coal Company - Meigs Mine No. 2

Surface and Ground Water Monitoring Plan

Current Plan

Southern Ohio Coal Company is currently utilizing a Surface and Ground Water Monitoring Program Plan approved by ODNR under the interim program. Streams are monitored once each month for flow, pH, total suspended solids, total iron, total manganese, sulfates, and specific conductance. The NPDES discharge points are also sampled weekly and analyzed for the same parameter. Ground water monitoring points are sampled quarterly under this plan and analyzed for pH, total suspended solids, total iron, total manganese, sulfate and specific conductance.

The current monitoring program includes the two stream points identified as D-1, M-1 and D-2, M-2 and five ground water monitoring points. These five monitoring points are three dug wells (DW-1, DW-2, and DW-3) and two springs (DS-1 and DS-2). All of the ground water monitoring points are located outside the surface operations area of the underground mine. (See Hydrology Map.) Monitoring of the ground water points had been suggested by ODNR and this will be continued. As indicated below, monitoring is also proposed for the areas overlying the proposed underground workings of the mine.

As in the current monitoring plan, the specified points will be sampled on the appropriate occasion and analyzed for the required parameters. The analytical results will be recorded on reporting forms as specified by the ODNR and submitted directly to the Agency.

Recommended Plan - Ground Water Monitoring

For the ground water monitoring phase of this recommended plan, representative drilled wells, dug wells, and springs will be involved. Because of the information obtained from the water supply inventory, it is not necessary to monitor all of the ground water sources in the area. The background data collected during the inventory can be used in the future to establish the premining condition of the sources. As indicated in the Addendum to Part 2, Item C, some of the residents were not available for contact. An attempt will be made to contact these individuals to determine their water supply sources prior to mining in the area.

The monitoring of groundwater at the selected site will be conducted on a quarterly basis. Due to the relatively slow movement of ground water with respect to surface water, the quarterly monitoring will provide seasonal information on the quality and quantity of ground water. On each monitoring occasion, the static water level in the drilled or dug well will be determined using a water level indicator. The flow at the springs will also be determined during the sampling. The samples collected will be analyzed for pH, total dissolved solids, suspended solids, total iron, and manganese.

Addendum to Part 3, Item E (5)

Southern Ohio Coal Company - Meigs Mine No. 2

Surface and Ground Water Monitoring Plan (Cont.)

Since Meigs Mine No. 2 is currently in production, the monitoring program will be phased into operation. The primary mining by the long wall method is being conducted toward the northeast portion of the workings and also toward the west central portion. The monitoring of a particular well or spring will be expected to begin as mining begins in the panel located immediately adjacent to the one which underlies the well or spring. This will provide sufficient background information prior to mining. Because the surface land is not owned by Southern Ohio Coal Company, it is recommended that existing wells be used for monitoring purposes.

Permission to monitor the wells and springs will be required. During the water supply inventory, the residents interviewed were questioned if monitoring on a regular basis would be permitted. On the basis of the responses in the northeast area, monitoring would be permitted for two dug wells, two drilled wells, and two springs. For the west central portion, monitoring would be permitted on the basis of the inventory responses at three dug wells, three drilled wells, and six springs. Agreements will have to be made with the owners prior to monitoring so the total of monitoring points is uncertain at this time.

Recommended Plan - Surface Water Monitoring

Intermittent or perennial streams which flow through or originate on the surface areas above the long wall mining portions will be included in the surface water monitoring. These streams will be monitored at the points where the streams leave or enter these areas.

The monitoring of the surface water will be conducted on a monthly basis. The flow in the stream at the time of sampling will be determined by appropriate measuring equipment (weir, current water, etc.). The samples collected will be analyzed for pH, total dissolved solids, suspended solids, total iron, and manganese.

The four surface water sampling points in the northeast portion of the proposed mining and the four in the west central portion as indicated on the Surface Water Sampling Map will be monitored. It is expected that permission will be granted from the landowners to monitor these on a regular basis.

In conjunction with this monitoring, Southern Ohio Coal Company proposes to monitor a stream situated on company property outside the above mentioned areas. This would serve as a baseline to reflect natural fluctuations due to climatic variations. This stream would be monitored on the same basis as the other streams.

ADDENDUM TO PART 3, ITEM I (1)(3)

Southern Ohio Coal Company - Meigs Mine No. 2

Structures existing within the proposed permit or adjacent areas which could substain material damage due to subsidence are: Approxmiately 25 dwellings, 20 unoccupied structures, and 16 ponds. These structures are within the area where full extraction mining is planned. Damage to these facilities should not be irreparable and should not cause use change. Subsidence will not result in irreparable damage to the surface. Reasonably forseeable land uses will not have to be modified due to underground mining. Lasting material damage to natural resources, i.e., streams, lakes, drainageways, is not anticipated. No features or facilities identified in Rule 1501:13-12-02 (E)(1) through (E)(3) will be located within the planned subsidence area.

Southern Ohio Coal Company's policy, not withstanding its rights, is to fairly compensate land owners for any damages to real property, such as private dwellings, outbuildings, and improvements. Southern Ohio Coal Company fully intends to meet the requirements of Rule 1501:13-12-02 (D)(1) and (D)(2) concerning correcting material damages to surface lands, and structures and facilities.

See Southern Ohio Coal Company Drawing No. D2-16-096 for location of structures referenced. Structures existing within the proposed permit are addressed in Addendum to Part 3, Item B(1).

Addendum to Part 3, Item I(4)

Southern Ohio Coal Company - Meigs Mine No. 2

Ohio Admin. Code, Section 1501:13-4-14(K)(4):

Based on approximately five years of longwall mining experience at Southern Ohio Coal Company's Meigs Division and the known geologic, agronomic, and hydrologic characteristics of the area, the following effects of planned subsidence are anticipated, if any effects at all occur: Planned subsidence with associated cracking is not expected to result in mixing of soil layers except possibly for some sloughing at the cracks; no damage to trees is anticipated; no alteration in soil management practices is likely to be needed and no change in the chemical properties of the soil is expected; the extent of sloughing at cracks will depend on the surface condition and activities; any fracturing of the compact layer at 20 to 30 inches will likely increase rooting depth and available water to plants growing within a few inches of the crack; it is not expected that the fertility of the soils in the area will be altered except within cracks if sloughing occurs; it is anticipated that there will be little effect on springs and seeps since they are part of relatively shallow flow systems and are more dependent on precipitation than upon subsidence cracks; it is expected that there will be very little effect on the wells in the area since almost all are developed in sandstone with impermeable shale underneath; effects on ponds and individual reaches of streams is not expected to cause any major hydrologic problem and any damage to such will be repairable; cracking

Addendum to Part 3, Item I(4)

Southern Ohio Coal Company - Meigs Mine No. 2

Ohio Admin. Code, Section 1501:13-4-14(K)(4):(continued)

may occur to structures but this will be preventable or repairable. Also see Addendum to Part 3, Item I(1)(3).

ADDENDUM TO PART 3, ITEM J(1)

Southern Ohio Coal Company - Meigs Mine No. 2

Longwall mining as practiced at Southern Ohio Coal Company consists of three basic machine types interconnected to form a mechanized mining system.

The first type of equipment is the roof support units that provide support for the immediate strata above the working area. These supports consist of a base which rests on the mine floor, four hydraulic cylinders or "legs" and a roof beam or canopy that offers protection of the working area. These supports are connected to the face conveyor by hydraulic cylinders and are advanced about 30" at a time.

The second equipment is the conveying system which transports coal to the mine transport system. This conveyor is flexible, and steel construction and extends the entire 500' to 675' length of the face.

The coal is cut by the third machine called the shearer. This machine is mounted on top of the face conveyor and travels along its length. The shearer cuts a 30" strip of coal from the face as it travels along the conveyor.

This system is installed after an area of coal is exposed by mining roadways or entries completely around a block of coal 500' to 675' wide and about 5,000' long.

The longwall face is then installed and begins mining by cutting the 30" pass, advancing the roof supports and positioning the conveyor for the next cut. This cycle continues until the entire coal block is mined, then the equipment is moved to a new location.

As the longwall face moves through or retreats the coal block, all the coal is removed and the roof is allowed to fall behind the roof supports creating a consolidated waste behind the face.

The shearer and face conveyors are electrically operated while the roof supports function hydraulically. The pumps that supply hydraulic oil are electrically powered and are located in the immediate vicinity of the face.

Room and pillar mining as practiced at Southern Ohio Coal Company consists of the coal property to be worked is divided and subdivided into areas by driving sets of entries into the field of coal on an engineered pattern consistent with the proposed mining system. A five entry system is utilized at Southern Ohio Coal Company. The sets of rooms are driven at 90° (usually) from the room entries. Each set of room entries or "panel", is separated from adjacent panels by a barrier of coal. The coal is cut by use of a continuous mining machine which is a machine with a rotating drum that cuts or rips coal from the face and loads it into shuttle cars in a continuous operation. Shuttle cars then dump the product onto a conveying system which delivers the material to the surface. The pillars left are of adequate size to amply support the overhead strata.

ADDENDUM TO PART 3, ITEM J(3)

Southern Ohio Coal Company - Meigs Mine No. 2

See attached map, Drawing No. D2-83-096. Support pillars will be left in areas where 100% recovery mining techniques are not utilized. These pillars will vary in size, according to the degree of stability required. Pillar dimensions range from approximately 28' x 28' in rooms to 60' x 60' in the mains. Safety factors range from approximately two (2) in the rooms to approximately four (4) in the mains.

ADDENDUM TO PART 3, ITEM J(5)

Southern Ohio Coal Company - Meigs Mine No. 2

On the basis of the information submitted with Part 2, Items B, C, and D of this application, there should be no permanent adverse impact of the proposed mining on the hydrologic regime. See Addendum to Part 3, Item I (4) for other anticipated effects of the planned subsidence. The extent of vertical and horizontal displacement at the surface will depend upon the thickness of the coal seam, depth of cover over the coal seam, the topography of the land, the width of the panel, and the lithology of the strata overlying the coal seam. The angle of draw associated with this mining operation has been determined to be between ten (10) and fifteen (15) degrees. The average cover is 200 to 300 feet, the coal seam averages approximately 54 inches, and the normal panel is 500 feet to 675 feet wide and about 5,000 feet long. Maximum subsidence would normally occur at the center of the panel and would approach approximately two-thirds (2/3) of the seam thickness.

Senator WARNER. I appreciate your traveling a long distance to join us. You have very clearly stated your case and it is an impressive one. The representatives of the Office of Surface Mining are here and have had the benefit of hearing from you.

My suggestion is you work with your Members of Congress to see whether or not you can resolve this matter.

Ms. MOORE. We have been doing that for a year and a half and we are still trying.

Senator WARNER. Now we will have Mr. Ronan, director of the Appalachian Office of Justice and Peace on behalf of the Catholic Diocese of Richmond.

STATEMENT OF PATRICK J. RONAN, DIRECTOR, APPALACHIAN OFFICE OF JUSTICE AND PEACE, ON BEHALF OF THE CATHOLIC DIOCESE OF RICHMOND, MARION, VA

Mr. RONAN. Good afternoon, Senator. Thank you for this opportunity on behalf of Bishop Sullivan to make this presentation. The Bishop was sorry he couldn't be here.

Senator WARNER. I must say I am sorry also. We have had the best times debating together a variety of issues.

Mr. RONAN. I am sure you have.

Senator WARNER. I think we have a strong mutual respect for one another.

Mr. RONAN. I believe that is true, Senator.

The bishop and the diocese has shown a consistent support for the efforts to regulate strip mining in a responsible way throughout the years. We have seen firsthand the adverse effects of irresponsible mining. Joining with his brother bishops in the Appalachian region in February of 1975, Bishop Sullivan signed a pastoral letter entitled "This Land Is Home to Me," in which he brought to the attention of the Catholic community the problems that seemed to be unique to the Appalachian region. One of these was the strong influence of the coal industry on the region. Let me quote to you a passage from that pastoral in the interest of giving a macroview of the situation of the region, and I quote:

> There cry is a strong message not because we have made it that way, but because the truth of Appalachia is harsh. In repeating this message we do not put ourselves in judgment of others. The truth of Appalachia is judgment upon us all, making hard demands on us bishops as well as on others.

End of quote from "This Land Is Home to Me."

The intent here is to show that we must share the responsibility for the issues at hand in the region.

I would like to begin my discussion with a brief historical analysis of the evolution of the act in question. I will paraphrase and try to move along.

Senator WARNER. We will put your statement in in its entirety.

Mr. RONAN. Thank you. I would appreciate it it my comments could also be included.

The first bill that was introduced by Senator or by Representative Dirksen in 1940 to begin reclamation and use the terms, and I quote from the bill——

Senator WARNER. Everett Dirksen.

Mr. RONAN. From Illinois in 1940. Let me quote from his bill. To fill in the holes caused by strip mining with spoil and soil "as may be necessary to make the contour of the land approximately the same as before the mining operation was begun"—1940.

Then in 1949 and 1970, which was between the 81st and 91st Congress, approximately 44 bills were introduced with no resulting legislation.

In 1971, during the first session of the 92d Congress, legislation was introduced under the sponsorship of Representative Ken Hechler, Democrat from West Virginia, with over 100 cosponsors, to ban surface coal mining altogether in the Nation. Obviously this bill did not pass.

Then in 1974 legislation cleared both Houses, only to be pocket vetoed. Again in 1975 another bill was vetoed by President Ford.

Senator WARNER. If I may make a suggestion, I have some familiarity with that. I will have the opportunity to go through that. I would like to mention where I am very, very much concerned in this area and you can, I think, be of help to me, and that is trying to strike a balance. You have had the benefit, you have been patient and sat through this testimony and you recognize the diversity of viewpoints that have been expressed here today. Is there a manner in which Congress can try, and moderate the positions and somehow reconcile this before this industry is lost to the United States? If lost, you know, the people without jobs turn to you. Your church from time immemorial has opened its doors to help the poor and impoverished and those who have lost jobs. You are taking a courageous stance in certain areas.

There is another area of responsibility of your church to care for those who are out of work.

Mr. RONAN. We have a tendency to that in this region and that can be substantial. Senator, my remarks——

Senator WARNER. You see the problem.

Mr. RONAN. I do see the problem.

Senator WARNER. We get all tangled up in the laws and we can go to court, we can hold hearings, but the practical matter is every day that goes by more and more people are out of work. We have lost coal production. We are losing markets and so forth.

Mr. RONAN. There are hard questions that have to be asked in the light of the coal industry's needs in the region. I think those questions have to be asked with a view to generational equity. That is we cannot presume that we have inherited the land from our parents anymore. We must presume we are borrowing it from our children.

Senator WARNER. That is a good statement. I agree with that.

Mr. RONAN. Now based on that, the bishop and the diocese and the Catholic bishops in general would encourage a diversified economy, an economy which does not exclude the coal industry, but looks for ways to build on the products that the coal industry can produce through coal. We also must look at other resources in the region. We don't just have coal in Appalachia. We have land, we have timber, we have water, and if we utilize one of those resources to the negation of the other, then we are not using responsible stewardship. And I believe, Senator, if you will permit me, that that is the question that has to be addressed. How, when looking generationally beyond the shortfall of an economic analysis, how can we use the resources to sustain our people?

Now you are a farmer, Senator. You have made that public statement.

Senator **WARNER**. Well, people accuse me of being a "gentleman farmer," but I have always pointed out that of the thousands of farmers I have met throughout Virginia I never met one that wasn't a gentleman.

I have enjoyed agriculture and I have been involved in it all my life, and I am still involved in it. I have an understanding and I look at these farms here, I have to tell you, it is exceedingly difficult for them to compete because of the expense of the overhead of machinery, the small fields, the rolling hills, it is tough.

Mr. **RONAN**. I would submit——

Senator **WARNER**. You need only to look at their barns and their fencing and they are trying to do the best they can to keep up with the age of machinery. I watch these things as I drive up these roads.

Mr. **RONAN**. I would bring to the Senator's attention, if I may, that prior to capital intensive farming and introduction of machinery to farming, 50-acre farms were the norm in Appalachia and those farms sustained families of 10 and 12 children with a commendable lifestyle, a lifestyle conducive to the development of people.

My point is that the model of farming, the agricultural economy, it also needs questioning in the light of generational equity. We cannot—it is another subject and I hate to address that right now. We cannot continue farming the way we are farming. That is another question that has to be asked in this same light.

Let me make the point that the coal industry is a victim of a world crisis. To presume that the Act is responsible for a world crisis affecting the coal industry is not to deal with the issues at hand.

Senator **WARNER**. I certainly don't take that position.

Mr. **RONAN**. I concur. I don't say that.

Senator **WARNER**. You are correct, it is a victim of this world crisis.

Mr. **RONAN**. I have seen in southwestern Virginia the growth of operators attitudinally to a more macrounderstanding to the integration of resources. I have seen that growth and I commend that growth and it has been good. We want to continue that.

We have got to look at the industry in the light of the total resources available in the region.

If I can finish with a summary of four points that I want to make.

Senator **WARNER**. Yes.

Mr. **RONAN**. They are, one, 44 years of legislation, Senator, should merit at least giving the act a chance. In Virginia, because of court sessions and so on, the act is really, the permanent regulations are really only in effect since January 1 of this year. We feel that the integrity of the legislation is important and it should be recognized.

Two, with regard to approximate original contour, I have heard this and I am sure you are tired of it yourself.

Senator **WARNER**. No; not tired, but have to help solve it.

Mr. **RONAN**. It seems that the issue at hand is contour stripping in the Appalachian region is difficult. OK. When we were trying to get the bill passed, and I worked trying to get the bill passed on behalf of the bishop, we asked for a ban on 20 percent, 20° slopes altogether. The AOC requirement——

Senator **Warner**. Twenty and above.

Mr. **Ronan**. Twenty and above. The AOC requirement was a compromise of that position; and to neutralize that compromise, section 522 of the act, which designated land unsuitable for coal mining, is an out. If those steep slopes cannot be contained, then they ought to be designated as unsuitable, in the interest of the total resources in the community, people, land, water, et cetera.

With regard to the primary enforcement responsibility of the State of Virginia, we are dealing with seven counties, three of whom are very heavily coal mining, Wise, Dickenson, Buchanan. The rest are marginal. So political representation on behalf of the total population, but more importantly on behalf of the environment, is questionable in terms of its objectivity. So we would question the objectivity of the division of mined land reclamation, given the power of the industry.

I took part in a meeting in Wise back in, I think 1976, somewhere in that period, when in one afternoon the Surface Miners Association raised $1 million for a truck convoy to go to Washington to lobby against this bill. There is no way that the citizens or the environment could compete with that kind of economic power. If that can happen then, it can happen again, and it has influenced the monitoring and the enforcing of the act.

We would suggest that the act belong, the primary responsibility for the enforcement of the act belongs with OSM, where objectivity can be assured. We would encourage that.

I have already mentioned the idea of a diversified economy and a return to small farming, labor intensive versus capital intensive farming, and opening research for what other resources can be used. The idea of generational equity itself.

One more point, Senator, which is not in my testimony, but I would like to make in reference to the international situation, with regard to the control of the environment impact of mining. The United Nations has numerous documents which deal with a look at the globe and how to contain and sustain life on the globe. One of these documents is entitled "On the Order of Nature," in which respect for the land and its resources is its primary concern. This document was released in 1982. If the world community could begin to address the Earth, Mother Earth, then I think we would be able to deal with Colombia, Australia, whatever. I would like to see our Government take a leadership role in affirming those documents and studies that have been done by the United Nations. With that, I thank you for this opportunity.

[The prepared statement of Mr. Ronan follows:]

TESTIMONY OF THE
APPALACHIAN OFFICE OF JUSTICE & PEACE
OF THE CATHOLIC DIOCESE OF RICHMOND

TO THE SENATE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

SENATOR JOHN W. WARNER, CHAIRMAN

AT PUBLIC OVERSIGHT HEARINGS ON

THE IMPLEMENTATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 IN THE APPALACHIAN COAL REGION

APRIL 18, 1984

SUBMITTED BY PATRICK J. RONAN

Introduction

My name is Patrick J. Ronan. I am the director of the Appalachian Office of Justice & Peace of the Catholic Diocese of Richmond, VA. I am making this presentation on behalf of Bishop Walter F. Sullivan, Bishop of Richmond.

The Appalachian Office of Justice & Peace was established in Wise and Dickenson Counties in 1967. I have been on the staff of the office since then and have personally been involved in the strip mining issue since that time.

Bishop Sullivan is pleased that Senator Warner extended the invitation to testify at this hearing. The Bishop thanks the Senator and the Subcommittee on Energy and Mineral Resources of the Committee on Energy and Natural Resources.

The Diocese has shown consistent support for the efforts to regulate strip mining in a responsible way. We have seen first hand, the effects on people and on the land of unregulated and irresponsible stripping. We have heard the people tell of rocks crashing through their roofs and seen the results of irresponsible blasting at strip-mine sites. We have seen and heard of water tables disturbed and peoples' only sources of water either polluted or lost from blasting. We have seen the streams and rivers that have had the life snuffed out of them from siltation and acidification, the results of run-off of strip mines. The Diocese has seen the high-walls and the spoil-banks that have scared the land and broken the hearts of the people who call the land, home.

Joining with his brother Bishops of the Appalachian region in February of 1975, Bishop Sullivan signed a Pastoral Letter entitled "This Land is Home to Me" which echoed the cries of the poor and the powerless of the region. I quote now from that letter:

"Their cry is a strong message
not because we have made it that way,
but because the truth of Appalachia is harsh.
In repeating this message
we do not put ourselves in
judgment of others.
The truth of Appalachia
is judgment upon us all,
making hard demands on us bishops
as well as on others." (This Land is Home to Me, pg. 1, para. 6.)

A Historical Discussion

Representative Everett McKinley Dirksen (R. Ill.) introduced a bill in 1940, requiring operators to post performance bonds and to fill in the holes caused by strip mining with spoil and soil "as may be necessary to make the contour of the land approximately the same as before the mining operation was begun."1/ This is the first reference on record to the infamous "Approximate Original Contour (A.O.C.)."

Between 1949 and 1970 including the 81st Congress through the 91st Congress, an additional forty-four bills were introduced and several hearings convened, all resulting in no legislation.2/

1/ "Legislative Proposals Concerning Surface Mining of Coal," Senate Committee Print, 92nd Congress, 1st. Session (Sept. 1971).

2/ Ibid.

In 1971, during the first session of the 92nd Congress, legislation was introduced under the sponsorship of Rep. Ken Hechler (D. W.Va.) and over 100 co-sponsors, to ban all surface coal mining in the United States within six months after the enactment date of the bill. That bill, H.R. 4556[3], was followed by approximately thirty-five additional bills to phase out or regulate coal surface mining in that same Congress.[4]

In 1974 legislation cleared both houses only to be pocket vetoed. This did not undermine the confidence or the commitment of the House and Senate Interior Committees to pass substantive, specific pieces of legislation. The process continued. However, on May 20, 1975, President Ford again vetoed the bill, and later, the House failed by three votes to override the veto.

In the 2nd session, the focus of attention was again on the House side and H.R. 13950, incorporating the vetoed bill with a few changes. This bill was twice voted out of committee but failed to gain a favorable rule to be considered by the full House.

Finally, in the 95th Congress, with a newly elected President, the twice-vetoed legislation now H.R. 2 and S. 7 became the Surface Mining Control and Reclamation Act of 1977 P.L. 95-87 and was signed into law by President Jimmy Carter on August 3rd, 1977, to the relief and delight of a large representation of citizens from the nation's coalfields.

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[3] 92nd Congress, 1st Session H.R. 4556

[4] Identical bills, H.R. 4557, 6482 , 7675, 7696, 8174, 8383 and S. 1498.

The Surface Mining Control and Reclamation Act of 1977 Now

Throughout this long legislative process, certain principles remained consistent. These principles are expressed in the Act as follows:

Performance Standards

The Act requires surface mine operators to comply with 18 performance standards in addition to the standards in the interim programs:

1. Maximize recovery of the coal (Sec. 515(b)(1)).
2. Stabilize and protect the affected surface area to control erosion and air and water pollution (Sec. 515(b)(4)).
3. Restore the topsoil or the best available subsoil to the affected land (Sec. 515(b)(6)).
4. Separate, remove and replace the topsoil horizons on prime farmlands (Sec. 515(b)(7)).
5. Design and construct permanent water impoundments to insure that the impoundment is adequately sized, stable and will not lower the quantity or quality of water for adjacent users (Sec. 515(b)(8)).
6. Conduct augering operations to maximize coal recoverability and to seal all auger holes to prevent drainage (Sec. 515(b)(9)).
7. Stabilize all waste piles (Sec. 515(b)(11)).
8. Refrain from surface mining within 500 feet of underground mine workings unless approved by the regulatory authority under certain protective conditions (Sec. 515(b)(12)).
9. Treat or bury all acid-forming, combustible and toxic materials in order to prevent water contamination and sustained combustion (Sec. 515(b)(14)).
10. Conduct reclamation in an environmentally sound manner and as contemporaneously as practicable with the mining operation (Sec. 515(b)(16)).

11. Construct and maintain access roads to control or prevent erosion, siltation, water pollution, damage to fish and wildlife or their habitat, and public or private property (Sec. 515(b)(17)).
12. Refrain from constructing roads or other access ways in or near a stream bed so as to seriously alter the waterflow (Sec. 515(b)(18)).
13. Be responsible for successful re-vegetation for five years if the operation is located in a region where the average annual precipitation is greater than 26 inches and for 10 years if the operation is located in a region where the average annual precipitation is less than 26 inches (Sec. 515(b)(20)).
14. Protect offsite areas from slides or damage and refrain from depositing spoil or locating any part of the operation outside the permit area (Sec. 515(b)(21)).
15. Place all excess spoil within the permit area and in a manner to provide stability and to prevent water infiltration (Sec. 515(b)(22)).
16. Meet other criteria as are necessary to achieve reclamation according to the Act's purposes (Sec. 515(b)(23)).
17. Minimize disturbance and adverse impact on fish and wildlife to the extent possible using the best technology currently available and to achieve enhancement of such resources where practicable (Sec. 515(b)(24)).
18. Provide an undisturbed natural barrier below the lowest mined coal seam to prevent slides and erosion (Sec. 515(b)(24)).

Underground mine operators must comply with additional performance standards in the permanent regulatory program that address subsidence prevention, sealing of surface entries and holes, elimination of fire hazards, protection of offsite areas, prevention of gravity discharge of water from mines, and minimizing disturbances on fish, wildlife and other environmental values. In addition to these specified standards in Section 515, they must also comply with those which are unspecified but contained in Section 516.

Designation of Lands Unsuitable for Coal Mining.

Section 522 sets out a program for the states and federal government to determine which lands under their respective jurisdictions are unsuitable for coal mining and makes five types of lands automatically unsuitable. The five types of areas that are statutorily off-limits to future surface coal mining are:

1. Lands in the National Park, National Wildlife Refuge, National Trail, National Wilderness Reservation, National Wild and Scenic Rivers, and National Recreation Area Systems.
2. Lands within the National Forest System unless there are no significant recreational, timber, economic or other values that are incompatible with surface mining operations.
3. Operations which would adversely affect public parks or places on the National Register of Historic Sites unless approved jointly by the regulatory authority and the agency with jurisdiction over the park or place.
4. Within 100 feet of a public road, unless a written finding is made after a local public hearing that public and landowner interests will be protected.
5. Within 300 feet of any home, (unless waived by the owner) and public building, school, church, community or institutional building and within 100 feet of a cemetery.

The program for designating additional lands as unsuitable sets out criteria for determining unsuitable lands and requires data collection and inventory, methods for implementing decisions, and opportunities for public participation. Before a state or the federal government can designate an area off-limits, it must prepare a statement on the area's coal resources, the demand for it, and the impact of a designation on the environment, the economy and the supply of coal.

Citizens Participation

The drafters of the legislation expressed a strong belief in involving citizens in the enforcement of the Act as a necessity to insure that the regulatory authority complied with the Act and that decisions were based on full and complete information. To this end the Act specifies opportunities for citizens to become aware of or participate in almost every stage of the regulation process. The major types of opportunities are listed below:

Public Hearings

1. At least one hearing on the proposed regulations for the interim and the permanent regulatory programs (Secs. 501(a)(C) and b)).
2. At least one hearing in the State on the State's proposed regulatory program (Sec. 503(b)(3).
3. Within 30 days after a permit application is approved or denied, at the request of the applicant or any person with an interest that is or may be adversely affected (Sec. 514(c)).
4. Within 30 days after receiving written objections, and a hearing request from any person with a valid legal interest which is or may be affected adversely by the release of an operator's bond or from a Federal, state or local government agency which has jurisdiction or expertise on some aspect of the mining operation (Sec. 519(f)).

5. Whenever the Secretary has reason to believe that violation of all or any part of a State program results from a failure of the State to effectively enforce its program (Sec. 521(b)).
6. Whenever a State designates or redesignates an area unsuitable for surface coal mining (Sec. 522(a)(4)).

An Appeal for the Act

Alas! We have yet to give this legislation a chance. Forty-four years since Rep. Dirksen introduced the first bill, we are still listening to industry objections to the bill; to Federal and State disagreement on enforcement of the bill; to citizens' complaints of industry abuse or lack of enforcement by either state or federal officials; to citizens' complaints of irreparable environmental damage.

Surely if there is any integrity in our democratic political institutions then this process of legislation has earned the respect of at least a few years of operation to test its effectiveness. We in Virginia, were operating under the interim regulations right up to December 31st, 1983. That means that the Act has been in operation approximately 3 1/2 months. Gentlemen! we submit, can the Surface Mining Control and Reclamation Act of 1977 have had a chance to show its value or its lack thereof to the nation in such a short time?

We strongly urge the committee to give the Act a chance. It has been compromised until its value as an environmental protection is questionable. Since there exists different criteria for interpretation of the Act between the Office of Surface Mining on the one hand and the Department of Mined Land Reclamation on the other, there are strip mining practices that are not in compliance with the intent of the Act. Given the dismal history of Virginia's submission to pressure from the coal industry, I find the state's enforcement of the Act questionable to say the least.

On Approximate Original Contour (A.O.C.) - Section 515(d) and (e) of the Surface Mining Control and Reclamation Act: We have participated in many hearings on this subject. A.O.C. has been questioned, challenged, rejected, accepted and finally adopted in the Act only to be challenged all the way to the Supreme Court in Virginia Surface Mining and Reclamation Association, Inc. v Andrus. "Approximate Original Contour" is still alive today.

Before the Federal Act was implemented in Virginia, strip mine operators used the "shoot and shove" method. The dirt and rock strata overlying the coal to be stripped were blasted loose, the coal was removed, the operator moved on, leaving as a vivid reminder of his cut into the mountainside a vertical highwall and a flat bench. The highwall and bench configuration disrupted natural drainage patterns. The highwalls crumbled, and exposed toxic materials to the elements causing acidification. Though Virginia never suffered too badly from acid drainage, the result of pushing spoil downslope was devastating. Southwest Virginia had over a thousand landslides. Rocks and debris clogged stream beds, reducing the carrying capacity of the streams and aggravating flooding. One small community in a heavily stripped watershed experienced four floods in 1977. The townspeople of St. Charles, Virginia, felt that strip mining was responsible for the severity of the flooding. In fact they testified on the side of the U.S. Dept. of the Interior in Virginia Surface Mining & Reclamation Association, Inc. v Andrus on this very point.

The "approximate original contour" provision requires that the dirt and rock removed during the strip mining process be replaced and compacted on the solid bench, rather than on the downslope, where there is a much greater potential for it to begin sliding. One of the premises of the Federal Act is that land which cannot be adequately reclaimed should not be strip mined in the first place.

A.O.C. was the compromise that resulted when a total ban against strip mining was proposed on all slopes of 20 degrees or more. The proposed 20 degree ban was rejected in favor of A.O.C.

To the extent that operators say "A.O.C. is impossible", they are saying that the slope is too steep to be reclaimed and therefore should be considered under lands unsuitable for coal mining (Sec. 522 of the Act).

Ironically, many operators in Southwest Virginia have done an excellent job of reclaiming back to A.O.C. through the interim regulation period.

National Academy of Science Report on A.O.C.

In A recent report on A.O.C. released by the National Academy of Sciences, the academy confirmed that in most cases highwalls should be eliminated altogether. However, they mentioned two possible exceptions, 1) If the engineer on the site cannot guarantee slop stability and 2) If the land owner wants to utilize the land for development purposes that would necessitate altering its original contour.

1) If the engineer on the site cannot guarantee slope stability:
   An exemption for this reason is totally against the intent of the Act. The Act gives two options either A.O.C. is accomplished or the site is considered unsuitable for coal mining. It is the intent of the Act that

both the community and the environment be protected therefore A.O.C. must be accomplished or no mining should take place.

2) If the land owner wants to utilize the land for development purposes that would necessitate altering its original contour:
In the Appalachian region, 72% of the land is absentee owned, and 80% of the minerals are absentee owned.[5] Land for potential development is not a demand in Southwest Virginia--a fact that even the state has acknowledged in the past. Therefore, it is not likely that this option will affect Southwest Virginia or the Appalachian region in general.

Consequently we would strongly suggest that A.O.C. is an integral component of the Act and should stay. Where A.O.C. is questionable, then the land should be designated as unsuitable for coal mining Section 522 of the Act.

Virginia's Enforcement of the Act

Ever since attempts to regulate strip mining began, the State of Virginia has resisted. If it had not been for the diligent work of Virginia Citizens for Better Reclamation (V.C.B.R.) little initiative would have come from the state to protect the people and the land.

At present The State Division of Mined Land Reclamation (D.M.L.R.) has primacy over the Office of Surface Mining (O.S.M.) in enforcing the Act. We have reports of many violations of the Act that have not been reported. Such basic responsibilities as updating permit application requirements have not yet been performed. The number of violations that have gone unnoticed by the State's D.M.L.R. continues to increase.

5/ "Land: A Broken Covenant" The Catholic Committee of Appalachia, P. O. Box 953, Whitesburg, KY 41858, 1982.

We would strongly urge that primacy for enforcement of the Act be placed where it belongs, with the Office of Surface Mining. I have noticed that the state of Tennessee in its wisdom has returned primacy for enforcement of the Act back to O.S.M. Let us do likewise.

On the State of the Economy in the Coal Fields

Bishop Sullivan and the Diocesan Office of Justice and Peace continue to be concerned about the slump in the coal industry and the many miners that are out of work. We are aware of the vulnerability of the miners to the fluctuations of the industry. The "boom & bust" effect of the coal economy on the people of the region has left its mark from the past. This "flaw" is not the result of strip mine legislation, however. Strip mining is not labor intensive rather it is capital intensive. Instead the "flaw" is the result of the control of the coal industry on the economy of the region. If the economy was diversified, making opportunities for a more integrated economy, then we feel more people would be at work in different industries and would not depend totally on the coal industry.

Regarding coal production, it seems unlikely that the demand for coal will increase significantly in the immediate future. The available oil resources on the market, the decline of the U.S. steel industry together with the decline of American industry in general, mitigate against increased demand for coal. However, should the demand for coal increase in spite of these factors (and the potential is there if the utilities would use clean methods of burning coal) then I would offer the following suggestions:

There are two types of land that can provide jobs for surface miners 1) stripping of virgin land and 2) stripping on abandoned mine sites.

Of the two we would strongly urge increasing permits on the second. Mining on abandoned sites can correct abuses of the past by requiring operators to reclaim under the Act. There are still many abandoned sites in the region.

Finally there is no substitute for safe underground mining. More people are needed to work underground mines than strip mines:

more coal is available to underground mining than there is to strip mining.

Let us then promote a safe underground mining industry and where feasible, under the Surface Mining Control and Reclamation Act of 1977, surface mine coal with respect for the people and the land.

Conclusion

Gentlemen, let me then summarize the Diocesan position on these questions concerning the Surface Mining Control and Reclamation Act of 1977.

1. The forty-four years of legislative process that resulted in the Surface Mining Control and Reclamation Act of 1977 merits giving the Act a chance to prove its effectiveness or non-effectiveness.

   The permanent regulations have been in effect in Virginia since Jan. 1st, 1984, we think more time is needed.

2. "Approximate original contour" (A.O.C.) is the result of much compromise in the legislative process. Where it does not work, then "Designation of Lands Unsuitable for Coal Mining" (Sec. 522 of the Act) should be enforced.

3. Place primary enforcement responsibility with the Office of Surface Mining. O.S.M. offers greater objectivity in maintaining the intent of the Act.

4. Work toward a more diversified economy that breaks the dependence of our people on the boom and bust syndrome of a coal dominated economy.

5. In the use of our natural resources, let us remember
   "We do not inherit the world from our parents,
   We borrow it from our children."

We thank the Committee for this opportunity to testify before you today. If there are any questions regarding the testimony, I would be delighted to answer them.

Thank you!

Respectfully Submitted,

Patrick J. Ronan
Director, Appalachian Office of
Justice & Peace
Catholic Diocese of Richmond

Senator WARNER. Thank you. It has been enjoyable and I am happy to tell my good friend that you represented him ably.

All right, we will hear from Mr. Mercure.

STATEMENT OF ROBERT MERCURE, ON BEHALF OF THE COUNCIL OF SOUTHERN MOUNTAINS

Mr. MERCURE. My name is Robert Mercure and I represent the Council of Southern Mountains today, and I thank you for allowing me to testify, because I got in under the gun a little bit. I am going to be very brief and pick on a few points because I figure everybody else is getting about as hungry as I am.

Senator WARNER. Well, we are hungry for information.

Mr. MERCURE. Good. I hope I can whet your appetite a little bit.

Part of the teeth of any legislation is the ability to make people comply with its statutes, and part of the ability is to be able to levy civil penalties of operators who have not complied with the law. The Department of Interior has not seemed to want to move to collect moneys owed to it. Among the things that is not collected are fines resulting from——

Senator WARNER. I want to address that point and save you a little time. I am impressed by that, and we are going to look into that aspect of it, and I think you are well taken to see what we can do. The law is the law and a stricter enforcement of the law and regulations——

Mr. MERCURE. You realize the scope of what is owed the Federal Government then.

Senator WARNER. Yes; I am.

Mr. MERCURE. Among the facts set up all the penalties that have been on the Federal Government that are listed in the Office's own report for January, bimonthly report, that less than one-half of 1 percent of all the penalties owed the Federal Government for outstanding cessation orders have never been paid, and of these outstanding cessation orders only 8 percent have ever been terminated, which is a very irresponsible attitude to the people affected by coal mining. That is 92 percent of the violations against them are still left in the States that they were when the miners quit mining, for the largest part, and that none of the penalties have ever been paid voluntarily by the coal industry, which I think shows a little bit of a lack of good faith on that part. Since you are familiar with that, I will leave that.

Another thing which was also previously mentioned is the amount of money owed in the abandoned mined land program. We support the current OSM changes to collect these moneys.

I notice that the State of Virginia and the mining industry seems to think Virginia should get a larger share of the AML taxes. We agree with that totally, but if these moneys are not collected, there is not going to be anything to get a share of.

Something I would like to make a quick comment on which I hadn't meant to. For years concerning this issue I keep hearing the comments about needs for flat lands in the Appalachian mountains. I don't know about anywhere else, but in Wise County, we have got flat lands coming out of our ears from the previous mining. These lands are in remote areas. When they were mined, the benches were not packed in such a way that you can build on them. Buildings subside. We have had problems with buildings put on ones that were supposedly compacted to allow future buildings. There is no water. That is what we have lost is water sources. Flat land out in the middle of nowhere that is slowly sinking land and has no water supply is useless. To call for more flat land is just compounding a mistake of the past, I really feel.

I think I will just pretty well leave it at that, except for one thing you might want to explore since you are concerned about Colombian coal. It concerns exactly whose investment is allowing it to be mined.

Senator **WARNER**. Yes. Thank you.

Ladies and gentlemen of this panel, I thank you for a very impressive contribution to this tough question.

The Chair must depart at this moment. I have got other duties and they are exactly at the opposite end of this State. One of the privileges of holding a statewide office, is that you frequently cross the full length and breadth of the State during the course of 1 day. I only allowed 3 hours and I will be sniffing breezes off the Atlantic or in a little less time.

Under the Senate procedures we are able to allow the hearing to continue. Mr. Sindelar and Ms. Mason will continue the hearing. We have one more witness scheduled, Mr. Blakely, and then we are going to allow the opportunity for the Office of Surface Mining to make some very important comments and observations on points that have been raised today.

Again, I want to thank all of those who have appeared as witnesses and those who have attended to allow them the opportunity to benefit from the testimony we received today. So I will not adjourn, I will turn it over to the capable hands of my two counsel. Thank you one and all.

Mr. **SINDELAR**. Our next speaker is Mr. J. Wes Blakely, chairholder in mining, Morehead State University, Morehead, KY.

STATEMENT OF J. WES BLAKELY, CHAIRHOLDER IN MINING, MOREHEAD STATE UNIVERSITY, MOREHEAD, KY

Mr. **BLAKELY**. Thank you, counselor. I have a brief statement prepared that I would like to read in relation to one aspect of the law that has been touched on earlier. Nonetheless, I would like to go ahead and make my comments and I appreciate the opportunity to be here today to do so.

Seven years ago they passed the surface mine law and that night a famous TV news commentator opened his broadcast with the statement, "* * * President Carter's energy program took a giant step forward today with passage of the surface mine law by the Congress."

That same night militant environmentalists in Washington were seen dancing in the streets to the wee hours of the morning in jubilation.

Now Walter Cronkite may have had some inside nonpublicized information about President Carter's energy program that I, as well as millions of other Americans, did not know about, but to those people engaged in the production of our mineral energy resources in the

United States that new law was anything but a giant step forward in our quest to achieve energy self-reliance. It amounted to more of a massive impediment than anything else.

Today, the many facets of both the logical and illogical stipulations of this law have certainly been argued and delineated in print and in voice 1,000 times over, while the vestiges of the law rattle the front columns of the Supreme Court.

I'm here today to offer comment on only one aspect of this significant law. But it is certainly an important aspect.

Historically, the people of the Western United States have always had a critical need for adequate water supplies. Just as historically, the people of the mountainous mid-Appalachian highlands have had an equally critical need for level lands for development purposes.

Yet, the surface mine law passed by the Congres in 1977 and subsequently developed by its administrators almost cruelly ignored both of these ancient needs.

In pursuit of the concept of restoring land to original contour and/or condition, some States in the West, namely Montana, succeeded beyond even the most zealous environmentalists' hopes, and called for even the weeds to be restored in the process.

Meanwhile, back here in the East, the fallacies of backfilling to contour on these steep mountain slopes ultimately came to pass, as natural atmospheric conditions continue to prevail over this most specious stipulation.

I argue for logic.

As far as Appalachia is concerned, the time is long, long past when we should truthfully take that giant step forward that Cronkite may have thought we were taking, and then, redress this law to encourage, not discourage, the concept of new land development through the plateau mining technologies developed by our surface coal mining industry.

This long deprived region of Appalachia cries out for some semblance of parity with the rest of our Nation when it comes to suitable lands for development purposes.

Yet, it is just as inconsistent with logic and economic sense to believe that people would take tractors and shovels and knock off these mountain tops to create the badly needed lands.

But, when they can remove the mineral resource, or coal in the process, then and only then does it become a practicable matter, economically.

Plateau mining technology in quest of our coal resources is a godsend to the people of mid-Appalachia's mountainous highlands, and represents just about the only way that the people of the region may ever have their long overdue prayers answered as far as new lands are concerned.

At the same time, in many cases, the new lands produced by this technology can and often do become more valuable than the coal itself, and the reason being the continuing generation of capital, and I might add, jobs, represented through the building, stores, houses, recreational facilities, factories or schools, that may be subsequently placed on these new plateaus.

And to that list, I happily add even huge agricultural complexes, such as the one under construction atop the 4,000-acre Martiki Plateau in Martin County, KY, and being built as a giant learning laboratory to prove to one and all that indeed we can mine the coal in harmony with our environment and also create something of lasting value for generations to come.

But, to create these badly needed plateaus today throughout our highlands, means an exception with the surface mine law.

We urge that the Congress also take still another giant step forward by being creative with its powerful regulatory scepre and officially encourage development of these plateau mines in direct relation to the given region's hard pressed economic needs, for we have reached the stage in time, both technologically and economically, that calls for planning and cooperation, not continued confrontation between elements of our society.

We replace coal as this region's major industry, as a matter at hand of prime concern for we face the ultimate depletion of our coal resources within perhaps the next 50 years when it comes to minable resources.

To achieve these requests, in the opinion of many thousands of residents of Appalachia, would show Congress to be truly responsive to all of the people's needs, not just to a vocalized few, who, in their myopic pursuit of extreme goals, would continue to penalize our region by insistence on illogical measures that fly in the face of sensible land use/planning concepts advocated not so long ago by one of this Nation's first genuine environmentalists, Mr. Gifford Pinchot.

I thank you very much, counselor, and appreciate this opportunity to address this matter with you today.

Mr. SINDELAR. I have one question, Mr. Blakely. You mentioned that there must be some variance to allow you for plateau——

Mr. BLAKELY. Well, it is an exception.

Mr. SINDELAR. There are exceptions already which allow for mountaintop removal and also variance from AOC. Might not your concept fit within that variance?

Mr. BLAKELY. It does. Not all blocks of coal are suitable to plateau mining. But where they are, what I am emphasizing is this, Mr. Sindelar, that where they are, they should be encouraged because of the need for developable land, and not hindered.

Mr. SINDELAR. So you are saying that the law would allow for it but——

Mr. BLAKELY. Could allow, but we need stimulation and not impediments.

Mr. SINDELAR. To do what you want you are not really advocating a change in the law, but instead just using the law as it should be utilized, implementing the variance that exists?

Mr. BLAKELY. Where these variances exist that could allow this; yes.

I want to express the need for land. They very definitely are needed. Anyone who travels through these mountains can see that.

Mr. SINDELAR. Thank you very much. Senator Warner indicated that the record will be held open for 1 week to receive additional testimony and submissions, written submissions from current witnesses and any other witness that could not be here.

As the Senator indicated, OSM has remained and will speak on a few points that were raised here today. They have indicated that they will also reply in writing to the committee for the record on the issues that have been raised in reference to their administration of the law at this hearing. That will be also provided to those who testify today, as well as the hearing itself will be printed up and will be available for public consumption.

Mr. Schmidt.

Mr. SCHMIDT. I appreciate the opportunity to come back again. I do have just a few points; as you indicated I will be happy to provide whatever additional material you need for the record.

The first point has to do with Commissioner Brown's comment on abandoned mined land. We are supporting the proposal that has been advanced by the Western State Energy Board which would return to Virginia 91 percent of the revenues that were collected. We have taken no position on that particular proposal; however, since the whole issue of the use of the inventory is so controversial, I would like to point out that there are two reasons that will relate to Commissioner Brown's statement, which had led us to prefer the inventory.

One is that the States will be receiving what we can as best we can determine the amount they need in order to solve the abandoned mined land problems. In other words, instead of having a fixed 91-percent amount, they could receive 120 percent of 140 percent. Virginia could very well be in the same situation, if the inventory update warrants it.

The second thing is that at the end of the period of time we would have an inventory which is in fact current, because it is central to the whole allocation process and would provide a tool for Congress to make the decisions in the future about what to do with the continuation of the tax and elimination of the tax, which is one of our great concerns on the use.

One of the things that did come out from a number of witnesses was the suggestion that the Office of Surface Mining, particularly my people responsible for the oversight, have been somewhat inconsistent in the application of policy. I appreciate the committee for bringing this out. We are aware of this problem. As a matter of fact, there is a meeting going on right now in West Virginia. I will be leaving this one to join that one, to continue to talk about this problem—how do you get consistent policy.

Our field office director for the State of Virginia, Ralph Cox, is in the audience also.

We are working on this problem and we hope that in some reasonable period of time we can get more consistent policy.

The third item has to do with the collection of civil penalties. Both Clinchfield and SOAP commented on that, although in different directions. We are under court order for both Judge Parker's order and Judge Gash's order. We are under court order to assess those penalties for 518(f). This is the civil and criminal penalty. We have latitude on that.

On the other hand, we feel that we can comply with both court orders.

Another issue that came up is the ability of the States or the industry rather to implement the provisions of the new Federal regulations, of its regular form regulations. The suggestion was made that the industry be free to adopt these measures as soon as the Federal Government puts them in place. Unfortunately, that is not the test.

The test is the approved State program. We are compelled by our own regulations and our reading of the act, require the State to resubmit regulations. We have worked out a schedule. We are now reviewing the programs of all the States. We expect within a year we will have gone through every State program, identified deficiencies that need to be fixed, worked with the States to accommodate changes that they want to make, and put the whole process back on the rails again to allow the benefits.

Another last issue, the Congressman or Senator expressed interest in having to do with the 2-acre lawsuit in the fourth circuit court. He indicated that he was curious about the 526 issue. The issue there is while reading 526 says that rules of national scope have to be tried in the District of Columbia. That is the reason we challenged Judge Williams' decision in the fourth circuit court.

That concludes the remarks that I have. If you have any questions, I will be happy to answer.

Mr. SINDELAR. Thank you, Mr. Schmidt.

On the subject of AML funding, I think I should point out the Senator has expressed today that he will work with Danny Brown of the State to see that Virginia receives proper AML funding. They will be talking with your office about that in the future.

Ms. MASON. I want to bring you back earlier; in your statement you talked about the inventory and you mentioned that the State will have time to revise and update the inventory. In the original inventory, is it correct that Oak Ridge had a major part in putting together that inventory?

Mr. SCHMIDT. That is correct.

Ms. MASON. Now is it your, is it OSM's idea to redo the inventory or just kind of modify it in light of some of the complaints?

Mr. SCHMIDT. It is basically modification. The inventory has been standardized by Oak Ridge. We are mindful of the States, that this was done in a manner that wasn't logical. We have offered training to the States. All of the States have received training by the end of this month. We have offered to review any of the earlier submissions that they call to our attention. They will show us where they think the mistakes were made.

In fact, we agree with it, then we will make those changes. Oak Ridge is no longer part of the process. It will be done by the field offices.

Ms. MASON. When do you expect that will be completed?

Mr. SCHMIDT. We have told the Congress that we anticipate an expedition of the inventory will occur about January of 1985.

Ms. MASON. January 1985?

Mr. SCHMIDT. Correct.

Ms. MASON. Thank you.

Mr. SCHMIDT. To allow the States about 9 months to update the inventory.

Ms. MASON. OK.

Mr. SINDELAR. This hearing record will be printed roughly some 2 months from now, and you can receive copies of it at that time. As the Senator has, the committee staff thanks each and every one of you for traveling the distance you did to participate in this hearing. With that, the hearing is adjourned.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

DRAFT

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Apportionment of Abandoned Mine Land Reclamation Funds

Date of Release: JAN 25 1984

INTRODUCTION

On March 15, 1983, the Director of the Office of Surface Mining (OSM) set forth his Abandoned Mine Lands (AML) Policy Statement and announced its availability in the Federal Register. This statement provided information on the Office's policy with regard to the resolution of priority reclamation problems, the procedures to be followed in funding reclamation and administrative activities in States/Tribes without approved Title IV programs, OSM's preference in terms of alternate methods of delivery of monies for use in reclamation, the use and modification of the National AML Inventory, the proposed mechanisms for apportioning the Secretary's discretionary share of the AML Fund and other matters of concern to the Congress, affected agencies and the public.

The apportionment of the Secretary's 50% share of the Fund was described in terms of the general process. No specific State/Tribal apportionments were given at that time. The purpose of this document is to provide those figures together with additional explanation of the apportionment process.

As an introduction to this explanation it is important that the difference between appropriation, obligation, and apportionment be fully understood.

Over the life of the Fund (1977-1992), roughly $3.4 billion dollars will be collected by OSM from coal producers and deposited in the U.S. Treasury. As part of the annual budget cycle, the Congress appropriates a portion of the receipts of the Fund to OSM for AML purposes. OSM, in turn, obligates these funds for various purposes. The largest collective category of obligations is for State/Tribal AML program grants awarded on the basis of need and capacity of the States/Tribes to expend these funds. Once properly appropriated by the Congress, obligated by OSM, and expended by either OSM or the States/Tribes, these monies are disbursed from the U.S. Treasury.

"Apportionment" is a multi-year projection showing how available monies will be distributed over time based on a specified methodology and explicit assumptionsabout the location of serious AML problems and future AML Fund receipts. It is a statement of intent which is fully in accord with both the Surface Mining Control and Reclamation Act (Public Law 95-87 or the Act) and the Director's AML Policy Statement. The apportionment process itself makes no money available and is subject to change over time as the underlying assumptions on which apportionments are based change in light of updated information.

The apportionment process serves a number of useful purposes:

a) It allows States/Tribes to anticipate the approximate number of dollars they will receive over the life of the Fund. Concern has been expressed previously by the States/Tribes because of a lack of an authoritative statement on this subject.

b) It allows the States/Tribes to realistically plan their long-range programs. Because one essential ingredient (the size of the Secretarial-share supplement) previously has not been provided, the States/Tribes have been unable to realistically scope their programs. They have been unable to staff their programs and conduct appropriate program planning activities because they have had only partial information on the financial resources that will be made available over the remaining period of collection.

c) It allows States/Tribes to realistically anticipate the latitude they have to undertake projects covering the range of priorities described in the Act. While few States/Tribes disagree that the first concern must be the mitigation of problems which affect the health, safety, and general welfare of the people of this country, many have been frustrated at the lack of information on the degree of flexibility they ultimately will have to deal with the full range of Congressionally-mandated priorities.

The following sections of this paper describe the apportionment process, and the appended chart provides the current apportionments for each eligible State/Tribe.

GOVERNING CONSIDERATIONS:

As set forth in Section 402(g)(1) of the Act, "the geographic allocation of expenditures from the Fund shall reflect both the area from which the revenue was derived as well as the national program needs for the funds" (emphasis added). In accordance with this requirement, OSM's apportionment process incorporates both provisions contained in Section 402(g)(1). Apportionment of the 50 percent State/Tribal-share to each respective State/Tribe fulfills the first charge; apportionment of Secretarial-share monies based on the highest priority problems within the Nation as a whole fulfills the second charge.

As set forth in OSM's AML Policy Statement:

1. monies from the Fund will be used to render benign both those conditions most hazardous to the welfare of the public and those representing the most severe sources of environmental damage from past mining; and

2. monies from the Fund will be applied in a manner reflecting the order of priorities set forth in the Act.

Additionally, the AML Policy Statement specifies that Secretarial-share monies from the Fund are to be apportioned to States/Tribes under the following conditions:

1. Secretarial-share monies from the Fund will be used to supplement State/Tribal-share monies to ensure that any State/Tribe can address its highest priority coal reclamation problems.

2. Secretarial-share monies will be apportioned to each State/Tribe in proportion to the estimated reclamation costs for its Priority 1 and 2 Problem Areas listed in the AML Inventory.

3. Secretarial-share monies received by a State/Tribe will be in addition to its State/Tribal-share monies, which, at this time, are intended to be distributed in full to each State/Tribe for Section 403 and 409 problems.

IMPLEMENTATION PROCEDURES:

The apportionment for each State/Tribe reflects the estimated maximum total amount to be credited to each State/Tribe over the remaining period of collection, based on current U.S. Department of Energy (Energy Information Administration) data regarding estimated United States' coal production and on current standardized data contained in the AML Inventory. These apportionments are subject to change over the life of the program as the data on which they are based change. (NOTE: Total future Fund revenues (i.e., both State-share and Secretarial-share receipts) have been developed by converting estimated quantities of coal production into dollars through multiplication of tonnage values by the appropriate factors contained in Section 402(a) of the Act. OSM recognizes that any estimate of future coal production is subject to uncertainty and will attempt to correct for this limitation by using the most current estimates available in developing apportionment reports.)

OSM developed the following procedure for use in apportioning the AML Funds.

1. In order not to penalize States/Tribes in which reclamation work was conducted in earlier years, the dollar value of a State's/Tribe's inventory has been increased by the value of all non-emergency, coal-related reclamation performed on its lands, from Fiscal Year 1977 through Fiscal Year 1983, which was paid for by Secretarial-share monies. Such work might have been performed through the Rural Abandoned Mine Land Program, by OSM directly or by the State/Tribe under a cooperative agreement. These reclaimed problems would have been included in the AML Inventory except for the fact that they had been addressed prior to completion of the Inventory. This adjustment normalizes prior year problems and initializes the inventory to "Year 0" of the AML program.

2. Total estimated Secretarial-share expenses over the remaining period of collection ($300,600,000) are to be deducted from the combination of Secretarial-share balance at the end of FY 1983 and projected future Secretarial-share monies ($1,372,104,000). These expenses are for such things as the Small Operator's Assistance Program (SOAP), Federal Programs expenditures, Federal and State/Tribal-administered emergency projects, Federal AML research and development efforts and the cost of administering the AML Fund.

3. The balance of Secretarial-share monies remaining after deduction of estimated Federal expenses is to be apportioned among all States/Tribes having an approved AML Program or currently seeking approval. This amount totals $1,071,504,000. Apportionment is based on each State's/Tribe's individual percentage of the total national reclamation problem for Priority 1 and Priority 2 Problem Areas as shown in the adjusted AML Inventory.

4. All Secretarial-share monies expended on a State/Tribe from Fiscal Year 1977 through Fiscal Year 1983 (with the exception of those spent on emergency reclamation) are deducted from that State's/Tribe's gross Secretarial-share apportionment. This step adjusts the "Year 0" inventory created in Step 1 to make it coincide with the current National Inventory.

5. Any coal producing State/Tribe with an approved Abandoned Mine Land Program or currently seeking approval, whose apportionment of Secretarial-share monies at this point in the calculations totals less than $1,000,000, is now apportioned a minimum of $1,000,000. The purpose of this minimum Secretarial-share apportionment is to assure that high-priority, coal-related reclamation projects not presently included in the Inventory can be addressed while the State/Tribe is adjusting its inventory.

6. Each State/Tribe is to be apportioned its full amount of estimated State/Tribal-share monies to be deposited in the AML Fund over the remaining period of collection, as well as any balance remaining in its account as of the end of the Fiscal Year 1983. These actual and estimated receipts total $1,421,902,000.

7. The State's/Tribe's portion of the Secretary's share computed in step 3 or 5 is added to the 50% State/Tribal-share computed in step 6 to determine the State's/Tribe's total apportionment. The total of all of these individual apportionments equals $2,493,406,000 ($1,071,504,000 plus $1,421,902,000).

APPORTIONMENT CONSTRAINTS:

The following conditions govern the actual obligation of monies apportioned to States and Tribes, and may result in future adjustments to those apportionments.

1. As long as a State/Tribe is working on coal-related problems, there will be no distinction between State/Tribal-share monies and Secretarial-share monies. That is, a State/Tribe cannot obtain State/Tribal-share monies for one particular coal-related project and Secretarial-share monies for a different one.

2. Secretarial-share monies shall not be obligated for non-coal reclamation projects.

3. Monies identified in Congressional appropriations for specified projects within States/Tribes and monies appropriated for the Rural Abandoned Mine Program (RAMP) will count against the total apportionment to which the State/Tribe is entitled.

4. Emergency projects undertaken by OSM, or undertaken directly by a State/Tribe under an approved emergency program, will be deducted from the Federal deduction described in step 2, Implementation Procedures, above and will not count against a State's/Tribe's apportionment.

5. While a State/Tribe may be entitled to receive a certain total level of funding over a period of years, in any one year it may receive only State/Tribal-share monies, Secretarial-share monies or an appropriate combination of both. The mix of monies within a State's/Tribes's annual grant is dependent upon such things as the available State/Tribal-share balance, the Secretarial-share balance and OSM's annual appropriation. The latter is not within OSM's control. The Administration's request for a specific amount of AML Fund monies may be raised or lowered by Congress, with such adjustments affecting the amount of such monies a State/Tribe may subsequently receive.

OTHER

The States/Tribes will be able to update their respective data contained in the AML Inventory as new Priority 1 and 2 problems are identified and will be expected to update that data as projects are completed. While continuous updating may occur for project-related purposes, new apportionment reports based on updated date will be issued only on a periodic basis. These reports will be issued in accordance with the above procedures and will be based on the then-current future coal production estimates and the cost data reflected in the updated AML Inventory. As Fiscal Year 1984 will mark the first opportunity States/Tribes will have to comprehensively update the AML Inventory, OSM intends to issue the next apportionment report in the Fall of 1984. Thereafter, it is expected apportionment reports will be released no less frequently than every two years. If future updating of the AML Inventory results in a need by States/Tribes for more Secretarial-share monies than are available, subsequent reports will show all States/Tribes receiving only their proportional share of whatever Secretarial-share monies are, in fact, still available.

As long as a State's/Tribe's total estimated receipts from both the State/Tribal-share and the Secretarial-share exceed the estimated cost shown in the Inventory to reclaim all its Priority 1 and 2 problems, OSM will consider approving lower priority coal reclamation work on which proper documentation has been submitted to OSM. The State's/Tribe's approved AML Plan must clearly indicate how it will ensure such lower priority work is not done at the eventual expense of higher priority work, and, that amongst its Priority 1 and 2 problems, the most severe problems are addressed first. In the absence of such information in the Plan, OSM will review projects individually in terms of Inventory data reflecting Priority 1 and 2 problems remaining to be addressed.

FY84-FY92 ABANDONED MINE LAND RECLAMATION FUND APPORTIONMENT

(Date of Release: JAN 2 5 1984

State/Tribe	State/Tribal-Share Monies			Secretarial-Share Monies	Total Receipts (State/Tribal-Share & Secretarial-Share)
	FY83 End-of-Year Balance	FY84-FY92 Estimated Receipts	Total Available		
Alabama	5,200,000	42,518,000	47,718,000	23,686,000	71,404,000
Alaska	800,000	2,905,000	3,705,000	1,000,000	4,705,000
Arkansas	100,000	578,000	678,000	2,465,000	3,143,000
Colorado	6,100,000	28,263,000	34,363,000	1,000,000	35,363,000
Illinois	27,200,000	69,523,000	96,723,000	42,948,000	139,671,000
Indiana	9,100,000	50,798,000	59,898,000	14,962,000	74,860,000
Iowa	400,000	880,000	1,280,000	11,811,000	13,091,000
Kansas	500,000	2,258,000	2,758,000	6,660,000	9,418,000
Kentucky	51,000,000	173,725,000	224,725,000	55,330,000	280,055,000
Maryland	1,800,000	5,770,000	7,570,000	2,543,000	10,113,000
Missouri	1,300,000	9,433,000	10,733,000	26,101,000	36,834,000
Montana	14,000,000	64,050,000	78,050,000	1,000,000	79,050,000
New Mexico	3,600,000	39,225,000	42,825,000	2,056,000	44,881,000
North Dakota	2,600,000	11,700,000	14,300,000	2,833,000	17,133,000
Ohio	6,400,000	43,720,000	50,120,000	128,009,000	178,129,000
Oklahoma	1,300,000	8,873,000	10,173,000	18,757,000	28,930,000
Pennsylvania	28,600,000	104,223,000	132,823,000	586,816,000	719,639,000
Tennessee	4,800,000	10,675,000	15,475,000	16,704,000	32,179,000
Texas	7,300,000	25,250,000	32,550,000	1,000,000	33,550,000
Utah	3,700,000	14,550,000	18,250,000	1,000,000	19,250,000
Virginia	6,100,000	32,780,000	38,880,000	11,457,000	50,337,000
West Virginia	24,700,000	126,670,000	151,370,000	76,796,000	228,166,000
Wyoming	75,500,000	225,025,000	300,525,000	24,324,000	324,849,000
Crow Tribe	3,900,000	4,050,000	7,950,000	1,000,000	8,950,000
Hopi Tribe	1,400,000	1,440,000	2,840,000	1,000,000	3,840,000
Navajo Tribe	18,700,000	16,920,000	35,620,000	1,000,000	36,620,000
Fed. States	NA	NA	NA	9,246,000	9,246,000
NAT'L TOTALS:	306,100,000	1,115,802,000	1,421,902,000	1,071,504,000	2,493,406,000

STATE/TRIBAL COMMENTS

AND OFFICE OF SURFACE MINING RESPONSES

COMMENT: The apportionment process must be in accord with the provisions in Section 402(g)(1) of the Act.

RESPONSE: As the attached Solicitor's Opinion and analysis of the Act's relevant legislative history indicate, the Congress intended the expenditures from the Fund to reflect both the source of the money and national program needs. The State-share provisions of 402(g)(2) address the intent regarding the geographic distribution. The apportionment based on the Inventory addresses the intent regarding national program needs.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

JAN 19 1983

Memorandum

To: Phyllis Thompson, Chief, AML Reclamation Division
Office of Surface Mining

From: Edward H. Bonekemper, III, Assistant Solicitor
Branch of Governmental Relations
Division of Surface Mining

Subject: Section 402(g)(1) - Geographic Allocation of AML Funds

This responds to your request for advice in answering a question raised by the Commonwealth of Kentucky during discussions on the Office of Surface Mining's (OSM) draft policy for allocating the Secretary's discretionary share of the abandoned mine land (AML) funds. Specifically questioned was whether the requirements in Paragraph 402(g)(1) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (SMCRA) are met by the Secretary returning 50% of the reclamation fees collected to the states or tribes from which they are derived.

Paragraph 402(g)(1) provides:

> The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the national program needs.

This language must be considered in conjunction with Paragraph 402(g)(2), which provides for a mandatory allocation of 50% of AML funds to the state or Indian reservation from which derived, and Paragraph 402(g)(3), which gives the Secretary discretion with respect to spending the balance of the monies.

Our review of the Act and its legislative history discloses that the Secretary has broad discretion in this matter. Section 402(g)(1) appears to be directory guidance to the Secretary for formulating allocation policies. No mandatory allocations are compelled by this provision, and it requires only a "weighing" of state tribal or regional concerns against national program needs. Accordingly, it is our opinion that: (1) no mandatory allocations are required by this provision of the Act; and (2) current OSM policies, including the draft AML allocation policy for the Secretary's discretionary share, meet the minimum requirements of Paragraph 402(g)(1) regarding consideration of local and national interests.

Our reasons for these conclusions follow:

(A) Legislative History

Our review of the legislative history reveals that Congress considered several alternatives for returning funds to the states/tribes, including one which would have returned the funds to the counties and school districts from which the revenues were derived. The options considered by Congress are set forth below.

1. H.R. 11500, Section 401(3)
   H.R. Rep. No. 93-1072, 93rd Cong., 2d Sess. 35,146(1974)

> (e) . . . Forty per centum of the revenues derived from coal mined in each county, school district or on lands within the Reservation of any Indian tribe shall be returned to that county, school district or school district impacted by coal mining or Indian tribe for use in meeting obligations with respect to schools, roads and health care. Such funds shall be returned to the appropriate county, school district or Indian tribe on a quarterly basis.1/

1/ The House Report explains the policy for returning the funds in the following manner:

> Western operators, in supplying an even larger share of the Nation's energy requirements, will bring about the movement of workers and families into the new coal regions. Most of the local political units are in no position to cope with the impending growth problems especially with respect to the tax and bonding capability. The need to forestall the destructive effect of this growth is seen as requiring the bill's departure from a totally retroactive approach to mined lands rehabilitation. In the East, the return of 40 percent of the funds collected back to the local county or school district may serve to supplement the inadequate tax base which has often kept public services at an inadequate level. Improvement in local roads, schools and health care is generally a matter of long-standing need in coal mining communities. H.R. Rep. No. 93-1072, 93rd Cong., 2nd Sess. 117-118 (1974)

We note that there is no other provision in H.R. 11500 which requires the return of AML funds to the states/tribes. This 40% return to counties and school districts was the initial Congressional proposal which evolved into the requirement in H.R. 2 that fifty percent of the funds collected be allocated to the state or tribe to fund state/tribe reclamation programs.

2. S.7, Section 401(e).
   S. Rep. No. 94-28, 94th Cong., 1st Sess. 27, 179 and 198 (1975).

> (e) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any state or Indian reservation shall be expended in that state or Indian reservation by the Secretary to accomplish the purposes of this title: Provided, however, that if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any area at the discretion of the Secretary in order to meet the purposes of this title. 2/

3. S.7, Section 301(e).
   S. Rep. No. 95-128, 95th Cong., 1st Sess. 6, 67 (1977).

> (e) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for

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2/ Similar language is also found in H.R. 25; refer to H.R. Rep. No. 94-45, 94th Cong., 1st Sess. 9 (1975) and S. Conf. Rep. No. 94-101, 94th Cong., 1st Sess. 13 (1975); for S.7, refer to S. Rep. No. 94-28, 94th Cong. 1st Sess. 26 (1975). In researching the legislative history, we were unable to find any explanation for why Congress switched the percentage from 40 to 50%. Also, there were no state AML programs proposed in 1975.

In H.R. 25, the companion bill to S.7 in the 94th Congress, the House provided similar language in Section 401(e) with the additional requirement that prior to expending AML funds, the Secretary receive and consider the recommendations of the Governor of that State or head of the governing body of the tribe having jurisdiction over a reservation. S. Conf. Rep. No. 94-101, 94th Cong., 1st Sess. 13 (1975). The Conference Report did not comment substantively on why this additional requirement was added. Presumably, it was an attempt to provide states/tribes a greater voice on how the reclamation funds will be spent. This policy was adopted by the 95th Congress and ultimately led to the adoption of state/tribe reclamation programs.

> the funds. Fifty per centum of the funds collected annually in any state or Indian reservation shall be expended in that state or Indian reservation by the Secretary or state regulatory authority pursuant to any approved state abandoned mine reclamation program to accomplish the purposes of this title after receiving and considering the recommendations of the governor of that state or the head of the governing body of that tribe having jurisdiction over that reservation, as the case may be . . . 3/

4. H.R. 2, Section 401(g)(1) and (2).
   H.Conf. Rep. No. 95-493, 95th Cong., 1st Sess. 15, 98 (1977).

> (g)(1) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the national program needs for the funds.
>
> (2) Fifty per centum of the funds collected annually in any State or Indian reservation shall be allocated to that State or Indian reservation . . . to accomplish the purposes of this title . . .4/

As you can see from reviewing the preceding provisions, the final version of Paragraph 401(g)(1) is a logical evolution of Congress' past efforts. As originally conceived, the reclamation program was to be Federally administered. To ensure equal treatment for the states, however, Congress developed the precursor to § 401(g)(1),

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3/ This draft of Section 401(e) appears to be a mixture of all the preceding bills. It includes, interestingly enough, a provision from H.R. 25 requiring consultation with the Governor or the head of the tribal government. This appears to be an editing error, however, since the legislative proposals by then provided states with their own abandoned mine land programs. H.R. 25 apparently provided for consultation with the State and tribes only because the program as then conceived was to be administered solely by the Secretary of the Interior.

4/ This is the final version of the geographic allocation provision. As you can see, it breaks the old provision into subparagraphs. We doubt whether there is any significance to be attached to this wording, however. It appears to be merely editorial.

a provision requiring that forty percent of the funds collected be returned to the county, school district or reservation from where the fees were collected.5/ This idea of state/tribe involvement was practical but had certain obvious limitations. Abandoned mine land problems may bear no logical relationship to areas undergoing current mining, and therefore funds may not be directed to the areas that have the greatest need. To remedy this situation, Congress eliminated the language requiring that the funds be returned to the county, school district or reservation from which they were derived and substituted general directory language that the Secretary consider both local and national needs in making expenditures from the fund.

This general guidance can be explained in two ways. First, it summarizes the allocation policy expressed in Paragraph 401(e); that is, fifty percent of the funds to the states and the rest to be expended by the Secretary based on national needs. Second, it provides guidance for the Secretary in disposing of his discretionary share of the funds. In the subsequent versions of this provision. however, Congress corrected this oversight by splitting § 401(e) into three sub-paragraphs which were renumbered as § 402(g)(1)-(3)6/.

To summarize our analysis of the legislative history, it appears that Paragraph 402(g)(1) provides only directory guidance to the Secretary. Given the mandatory funding of state programs in Paragraph 402(g)(2) and express authorization for the Secretary's expenditure of funds in Paragraph 402(g)(3), we believe Paragraph 402(g)(1) has little importance except for its for evolutionary content for statutory construction.

5/ One of the reasons given by Congress for the return of funds to the area from which they were derived was to provide Western states experiencing rapid growth some community impact assistance funds and the Eastern states a supplement to help pay for vital public services. H.R. Rep. No. 93-1072, 93rd Cong., 2d Sess. 117-118(1974). Both of these concerns have been resolved in the final version of H.R. 2. Impact assistance funds for Western states were limited due to alternative sources of funding, and public service concerns were either included in Section 403 objectives or eliminated as being beyond the scope of the reclamation program. H. Conf. Rep. No.95-493, 1st Sess. 98, 99 (1977).

6/ See Section 401(g)(3) in H.R. 2; H. Conf. Rep. No. 95-493, 95th Cong., 1st. Sess. 16 (1977).

(B) Statutory Interpretation

Also supporting the conclusion reached above are several rules of statutory construction. First, it is a general rule of statutory interpretation that the rejection of an amendment indicates the legislature's intent not to include the provision embodied in the rejected amendment. Sands, Statutory Construction, § 48.18 (1974). In the present situation, Congress considered the alternative of returning a certain percentage of funds to counties and school districts from which the revenues were derived but rejected it in favor of other allocation methods. Thus, this rule supports an interpretation that the present language in Paragraph 402(g)(1) does not require that any mandatory funding percentage be returned to a specific area.

Second, another rule of statutory construction states that specific statutory provisions should be given precedence over general provisions. Sands - Statutory Construction, § 47.17 (1974). Here, Paragraph 402(g)(3) specifically provides that the Secretary may spend the balance (after the paragraph 402(g)(2) distribution) of the funds collected in any state or reservation in order to meet the purposes of this title. Since this provision speaks directly to the Secretary's expenditure of his discretionary share of AML funds, it should control over more general provisions.

Third, the practical inquiry of any statutory interpretation is to determine the intent of Congress. For the instant case, we have been unable to find any debates, discussions or reports which would indicate that Congress intended that a certain percentage of fees over and above a state's 50% share be returned to the geographic area from which they were derived. To the contrary, the debates indicate a much broader generic confrontation of individual states' rights versus national concerns.7/

As viewed in this larger context, we believe Congress intended that the Secretary recognize these competing forces and try to balance the interests in developing an acceptable allocation policy. Paragraph 402(g)(1) merely embodies this weighing test and instructs that the Secretary's expenditures reflect the legitimate needs of coal producing states and regions as well as national needs.

7/ See 123 Cong. Rec. 8112-8117 (1977).

Based on the legislative history of this section and the above rules of statutory construction, it is our opinion that Paragraph 402(g)(1) does not require that specific funds be diverted back to the area from which the revenue was derived. It is directory only and requires only consideration and weighing of local versus national needs.

The final issue to be resolved concerning the language of Paragraph 402(g)(1) is what did Congress mean by the phrase "geographic allocation?" Although there is no specific reference to this phrase in the Congresional reports or debates, we believe this phrase probably refers to a "state or regional" framework. As indicated in the discussion of legislative history, this language was inserted when Congress dropped the idea of returning monies directly to the counties, school districts and reservations and provided instead that 50% of the fees should be returned to the states/tribes.8/ With the evolution of state programs and the mandatory allocation to the states/tribes, this phrase no longer has the significance it did under a Federally directed program. To conclude, therefore, we believe that OSM has discretionary authority to determine the meaning of this phrase. Whether or not it is given a regional, state or local connotation by OSM, we would still re-emphasize that the phrase is only directory and does not mandate any specific allocation. If you have any questions concerning this opinion or require any further assistance, please do not hesitate to call.

8/ S. Rep. No. 94-25, 94th Cong., 1st Sess. 27, 179 and 198 (1975).

cc: William Schmidt, OSM
Marshall Cutsforth, OSM
Jim Fary, OSM
Patti McHugh, DSM
Lew McNay, OSM
Anna Norton, Eastern Technical Center
All Field Solicitors' office

bcc: Docket
DSM Chron
Subject: AML General: AML State Program-Kentucky:AML Regs § 872
Warner:RF:kmh 1/10/82 Disk Warner 9
Warner copy
Horn copy
Morris

COMMENT: The allocation of the Secretary's discretionary share of the AML Fund is a major action as defined under the National Environmental Policy Act of 1969 and, therefore, the process to be followed in allocating those monies must be evaluated in an Environmental Impact Statement prior to its implementation.

RESPONSE: OSM's policy statement on the allocation of these funds has been previously evaluated for its environmental consequences in the EIS published by OSM in 1979-80 (Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation Under Title IV of the Surface Mining Control and Reclamation Act of 1977). The outstanding quality of the EIS was documented in a memo (attached) from the Assistant Secretary for Energy and Minerals to the Director of the Office of Surface Mining.

This EIS considered a number of alternative ways to allocate the Secretary's share of the AML fund. The Abandoned Mine Land Policy, as it concerns the allocation of the Secretary's discretionary share of the AML Fund, is within the range of alternatives considered in the EIS and the environmental impacts of this policy have been evaluated. The EIS concluded that the greatest environmental benefit at a national level consisted of the composite or goal oriented approach. Under this alternative, OSM could allocate the Secretary's share of the funds equally among the geographical regions of the Nation or it could allocate such funds in proportion to the location and severity of AML problems in association with population density.

This EIS on fund allocation was published in draft and final form and was sent to the various States for comment. Public hearings were also held in variuos locations of the country. All comments and suggestions on the AML allocation policy were considered by OSM.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

June 19, 1980

MEMORANDUM FOR THE DIRECTOR, OFFICE OF SURFACE MINING

From: Joan M. Davenport
Assistant Secretary - Energy and Minerals

Subject: Draft Environmental Impact Statement on Abandoned Mine Lands Reclamation Program

The Chairman of the Council on Environmental Quality recently wrote to the Secretary and transmitted its review of agency compliance with the CEQ regulations of September 29, 1978. Its overall review of the draft environmental impact statement on the Abandoned Mine Lands Reclamation program was excellent. To quote CEQ, "This environmental impact statement is one of the best reviewed. It clearly is a document which will inform the public and decisionmakers of the environmental consequences of the Act in a way which will guide decisions. It is an analytical document."

This is high praise indeed. The final environmental impact statement was, in my view, a much improved product from the draft environmental impact statement. I know many OSM staff members worked long hours to produce these documents. They should be commended on their excellent work. The CEQ evaluation reflects most favorably on all of OSM.

Please have a copy of this memorandum put into the personnel file of each staff member who contributed significantly to this EIS.

Joan M. Davenport

COMMENT: Delay use of the AML Inventory in the apportionment of monies until the States/Tribes have had an opportunity to update their Inventory data and submit additional proposals regarding apportionment procedures.

RESPONSE: OSM has sought, for at least five years, a rational way to apportion the Secretarial-share of the AML Fund. For the past year, OSM has worked with the States, Tribes, and other interested groups in its effort to develop a basis for distributing Fund monies, which would ensure all citizens of the Nation receive equal protection from the most severe problems of previous coal mining. This has not been an easy task, for the problems, like fees paid into the Fund, vary significantly between States/Tribes, and individual State/Tribal interests are not necessarily consonant with OSM's perspective on the needs of the Nation, as a whole.

OSM has carefully considered a number of alternative bases on which an apportionment might be made and have encouraged States/Tribes to suggest their own detailed methodologies for inclusion in the pool of potential approaches to the problem. While no such detailed methodologies have been submitted, a number of suggestions have been made that criteria other than data in the AML Inventory be used, in some fashion, for distributing monies. The attached chart illustrates the standing of each State/Tribe when the criteria most frequently mentioned are applied. After examining the pros and cons of all recommended alternatives, OSM settled on use of the AML Inventory for the reasons specified in the AML Policy Statement.

OSM recognizes there are many concerns about the accuracy and completeness of the data contained in the Inventory. It is for that very reason that OSM has developed a procedure through which the States/Tribes may correct any mistakes which might have been made in standardizing the National Inventory, thereby affecting the estimated amount of Secretarial-share monies to which they appear entitled. That procedure has been available for use since May 1983.

Because of the concerns expressed by the States/Tribes, however, OSM has decided to revise the original draft apportionment paper to reflect the most recent Department of Energy coal production projections and a number of suggestions made by the States/Tribes, and to defer finalizing this revised draft for at least six months. This is being done to allow the States/Tribes sufficient time to update their inventories and to allow interested parties further opportunity to submit alternative apportionment proposals which would better match Secretarial-share monies from the Fund to the most serious abandoned mine land problems. Until this revised draft has been finalized OSM will use the draft apportionment for apportioning monies for fiscal year 1984 grants and to assist in planning the fiscal year 1985 and fiscal year 1986 grant programs.

STATE STANDING ACCORDING TO VARIOUS CRITERIA

State	% Population Affected/Rank*	% Historic Coal Production/ Rank**	% Estimated Reclamation Cost/Rank**	% Of Total AML Funds $ Using OSM Apportionment and Standardized Data/Rank
Alabama	2.9 (9)	2.8 (8)	1.9 (8)	2.86 (9)
Alaska	0.5 (19)	(*) (22)	(*) (22)	0.19 (25)
Arkansas	0.6 (15)	0.2 (21)	0.2 (18)	0.13 (27)
Colorado	5.2 (5)	1.4 (9)	0.8 (11)	1.42 (14)
Illinois	9.7 (3)	10.4 (3)	6.0 (5)	5.60 (6)
Indiana	3.9 (7)	3.4 (6)	2.3 (6)	3.00 (8)
Iowa	.6 (16)	.8 (12)	.4 (16)	0.53 (20)
Kansas	.2 (22)	.7 (15)	.4 (12)	0.38 (22)
Kentucky	5.5 (4)	10.2 (4)	10.4 (4)	11.23 (3)
Maryland	0.4 (20)	0.7 (16)	1.2 (10)	0.41 (21)
Missouri	.6 (17)	.8 (13)	.5 (13)	1.48 (12)
Montana	2.4 (12)	.7 (17)	.2 (19)	3.17 (7)
New Mexico	(*) (26)	.5 (18)	.2 (20)	1.80 (11)
North Dakota	2.8 (10)	.4 (20)	.2 (21)	0.69 (19)
Ohio	4.0 (6)	6.4 (5)	10.9 (3)	7.14 (5)
Oklahoma	.6 (18)	.5 (19)	.3 (17)	1.16 (17)
Pennsylvania	27.6 (1)	33.7 (1)	34.5 (1)	28.86 (1)
Tennessee	1.1 (13)	1.2 (11)	1.8 (9)	1.29 (16)
Texas	.3 (21)	.1 (23)	(*) (23)	1.35 (15)
Utah	3.2 (8)	.8 (14)	.5 (14)	0.77 (18)
Virginia	1.5 (12)	3.1 (7)	2.0 (7)	2.02 (10)
West Virginia	11.6 (2)	19.4 (2)	24.6 (2)	9.15 (4)
Wyoming	.9 (14)	1.3 (10)	.5 (15)	13.03 (2)
Crow Tribe	— (23)	— (25)	— (24)	0.36 (24)
Hopi Tribe	— (24)	— (26)	— (25)	0.15 (26)
Navajo Tribe	— (25)	— (24)	— (26)	1.47 (13)
Federal States	—	—	—	0.37 (23)

* Value is less than 0.1
** Data taken from 1980 AML EIS

COMMENT: The data used in computing each State's/Tribe's apportionment should be provided.

RESPONSE: The following information is attached and reflects all data used in developing the apportionment report.

1. Coal production projections (by State, year, and type of operation) used in the revised draft apportionment report, and a description of how they were compiled (attachment 1).
2. Accounting of annual actual fee receipts (FY 77-82) and projected fee receipts (FY 83-92) (attachment 2).
3. Accounting of previous Secretarial-share program expenditures by State, and previous Federal administrative costs (attachment 3).
4. Accounting of estimated Federal expenses for FY 83-92 (attachment 4).
5. Accounting of previous State/Tribal-share program expenditures (attachment 5).
6. Apportionment report and narrative explanation of computational procedure (attachment 6).

ATTACHMENT 1

Department of Energy
Washington, D.C. 20585

SEP 21 1983

Ms. Phyllis Thompson
Chief, Abandoned Mine Land Reclamation Division
Office of Surface Mining
U.S. Department of the Interior
Washington, D.C. 20240

Dear Ms. Thompson:

This letter conveys the detailed methodology describing the techniques used to produce the annual coal production projections for surface and deep mined coal by state for the next 10 years sent to you on August 12, 1983. I trust that this meets your needs.

The methodology used to arrive at the projections is based upon the use of documented and proven models, and techniques utilized by the Coal Division in the conduct of various analytical activities. The "disclaimer" that appears on the tables provided to your organization appears on all publications published by the Energy Information Administration (EIA) as a result of an agreement between EIA's Administrator and the Secretary of Energy. A copy of the 1982 Annual Energy Outlook is enclosed with the disclaimer shown on the title page.

If the Coal Division can be of further assistance to you, please contact me on 252-6860 or Robert Schnapp on 252-1760.

Sincerely,

Charles C. Heath

Charles C. Heath
Director
Coal Division
Energy Information Administration

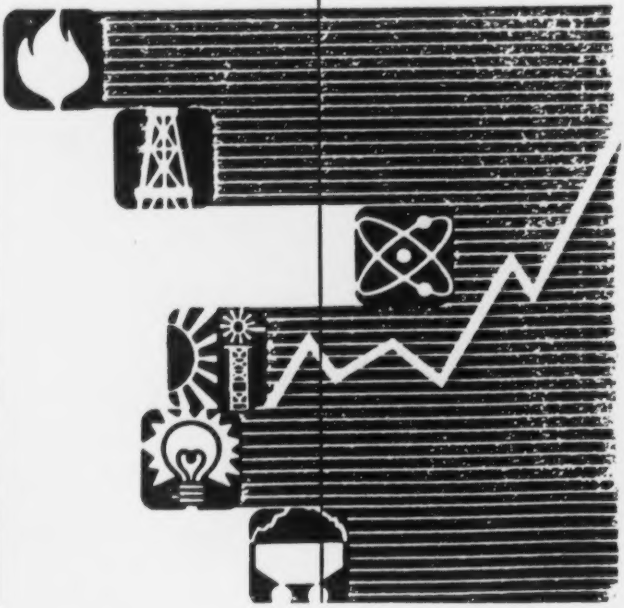
Enclosure

Energy Information Administration
Office of Energy Markets
and End Use
U.S. Department of Energy
Washington D.C. 20585

1982 ANNUAL ENERGY OUTLOOK

With Projections to 1990

DOE/EIA-0383(E
Dist. Category UC-9



This report was prepared by the Energy Information Administration, the independent statistical and analytical agency within the Department of Energy. The information contained herein should not be construed as advocating or necessarily reflecting any policy position of the Department of Energy or any other organization.

Documentation of Surface and Underground Coal Production by State

Introduction

This report documents the data and methodology employed in 1983 to develop projections of surface and underground coal production by state for 1982 through 1993 (Tables 1 through 4). The Data Analysis and Forecasting Branch, Coal Division, Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration (EIA) prepared these projections at the request of the Abandoned Mine Land Reclamation Division, Office of Surface Mining, Department of Interior.

EIA prepared these by integrating projections derived from several of its models and additional data from diverse sources. These sources of information include:

- Published EIA projections:
  - 1983 coal production by state - Quarterly Coal Report, January-March 1983, page 72, DOE/EIA-0212 (83/1Q).
  - Total United States coal production, 1985 through 1990, medium world oil price case - 1982 Annual Energy Outlook, April 1983, page 146, DOE/EIA-0383 (82).
- Special runs of EIA models:
  - National Coal Model (NCM).
  - Coal Supply and Tranportation Model (CSTM).
- Data from EIA and Bureau of Mines publications:
  - Coal Distribution January-December, 1980, and corresponding reports for 1981 and 1982, EIA, DOE/EIA-0125(80/4Q), (81/4Q), (82/4Q).

  - Cost and Quality of Fuels for Electric Utility Plants 1980 Annual" and the corresponding report for 1981, EIA, DOE/EIA-0191 (80), (81).
  - Annual state surface and underground coal production, 1960 through 1981 from EIA and Bureau of Mines reports.

o Data on the coal production outlook of individual states, obtained from state sources.

o Other state-related data from various sources.

General Approach

Several sources of information were used rather than the results of a single model because most models are less accurate at levels of aggregation finer than at the regional or national level. The real world is far more complex than a model representation. A model usually bases the procurement decision on the least delivered cost source of a particular quality of coal. The delivered cost is calculated as the sum of the estimated average cost of that coal in a supply region plus the shipping cost from the centroid of that supply region to the centroid of the buyers' demand region.

In the real world, coal of a given quality is sold at a range of prices in a supply region (defined as a state or portion of a state). Coal quality in the EIA models is based on ranges of heat and sulfur content, while the buyers' specifications may consider additional factors. The transportation distance from a supply state to a demand state may be longer or shorter than the average figure assumed. Also, buyers consider factors such as the size of the producing company and the company's past reliability, which are not considered in the model. These differences are particularly important when production of similar coal is estimated for adjacent states. At the regional level, errors in assigning production to adjacent states largely cancel out.

To reduce the uncertainty of the source of production from adjacent states, aggregate data on 1981 electric utility coal contracts were entered in EIA coal models. As a result, the utility sector in a demand region uses contract coal from specified supply regions up to the amounts of the contract quantities before seeking other coal. However, if the demand is less than the sum of the contracts, the contract shipments are reduced to the level of the demand. Also, to supplement the contract data, information on scheduled operating dates of new electric generating units, which is incorporated in the models, was updated for lignite-fire units in Texas and Louisiana.

Another reason for using multiple sources of information is that models are designed to solve particular problems; they are more detailed in the areas relevant to the primary problem and less detailed in other areas. (The ideal model would have the problem of requiring enormous amounts of data and computer time. It would also be extremely difficult for the user to "trouble shoot" or to interpret specific results). On occasion better results can be obtained from two or more models, each of which emphasize different aspects of the same problem, rather than from either model alone. For this reason, both the NCM and the CSTM were used to supplement the unpublished state-level projections that underlie the summary coal demand and supply projections published in the 1982 Annual Energy Outlook (AEO).

Methodology

The Intermediate Future Forecasting System (IFFS), used for the AEO, projects complete energy supply/demand balances at the national and Federal region levels. It provides the only current comprehensive EIA view of the national energy system. Therefore, national coal production from 1985 through 1990 in this report is based on the IFFS medium world oil price projections.

The IFFS coal and electricity demand projections were also used to provide the demands to the NCM and the CSTM. Since IFFS was not run beyond 1990, and later projections were required, the coal and electricity demands were projected to 1995 using constant growth rates. These projections for 1995 were then used in the NCM and the CSTM. The 1991 through 1993 projections in this report are based on interpolations of the NCM and the CSTM results for 1990 and 1995. (The NCM and the CSTM were run for 1985, 1990, and 1995 for other analyses, so projections for the same years were used for this report). However, at the state-level the IFFS results needed to be supplemented, because the coal component of IFFS did not distinguish between surface and underground production and because IFFS did not represent the effect of sulfur content on the coal procurement decision of electric utilities as well as either of the other two models. Since the NCM and the CSTM provide moderately different perspetives, both models were used to extend and supplement the IFFS results.

The assignment of state production to surface and underground methods of production was based primarily on information in the NCM, the CSTM, and the historical time series of surface and underground production by state. The NCM generates surface and underground production projections. The CSTM was modified to discriminate between the two methods of production.

For 1982 through 1985, the time series data on state surface production as a percent of total production were projected and applied to the state totals. In some cases the results were adjusted on the basis of additional information.

The final detailed 1985 figures were then compared with the NCM and CSTM surface and underground results, and the major deviations were examined to determine whether they were due to systematic errors in the models. This examination included comparing the 1985 model results with those of 1990 and 1995 to see whether individual 1985 deviations also occur in 1990 and 1995. The individual model results were adjusted for 1990 and 1995, and targets for total production in the Appalachian, Interior and Western regions were set equal to the average of the adjusted results of the two models. Finally, the detailed projections were developed on the basis of the averages of the model results and the additional information that had been assembled. A few examples of adjustments and use of additional information follow.

In the CSTM, Utah production was judged to be consistently too high because projected exports from Utah to the Northern Orient were substantially greater than had occurred recently, as shown by the "Coal Distribution Report" data. A portion of Utah exports was shifted to exporting states in the Appalachian Region, to produce a distribution of exports among states that was more consistent with recent experience.

New Mexico in 1985 is represented as shipping several million tons of steam coal to Texas, although the necessary railroad to the mining area does not yet exist. (Since the models extend to 1995, the required infrastructure is assumed to be available). This production was shifted to Wyoming, because it is a major supplier of coal to Texas, and because Wyoming's projected production was less than the total of firm contracts reported to that state by mining companies. For 1990 and 1995, the Star Lake Railroad or its equivalent is assumed to exist by 1990, and New Mexico shipments to Texas gradually increase to the level projected for 1995.

Production of lignite in Louisiana was reduced in the CSTM because of recent deferrals of planned lignite-fired electric generation plants. This production, adjusted for Btu content, was also shifted to Wyoming, which is the major supplier of utility coal to Louisiana. For the NCM, which does not include a Louisiana coal supply region, the equivalent of projected Louisiana production was deducted from Wyoming.

Production of Texas lignite in 1985, 1990 and 1995 was based on a schedule of planned operation dates of new lignite-fired electric generation units embodied in the NCM. An annual schedule was used to interpolate between these years.

A technical problem in the Resource Allocation and Mine Costing (RAMC) model, which produces the supply curves used in EIA coal models, resulted in underestimating production by small surface mines which use drag lines. This especially affected the ratio of surface to underground production in the Northern Appalachian Region. This problem did not have a significant effect on total state production, since there was sufficient potential underground production to satisfy demand. This error was adjusted on the assumption that the ratio of small to large surface mine production in the affected states would be maintained.

Data on the firm sales contracts of the mine operations in Montana and Wyoming were provided to EIA by these two states. These data were used as targets in the development of the production projections for these states. However, within the framework of this analysis the total of these contracts did not appear to be achievable, especially in the period between 1985 and 1990. Over the past few years total production from these states has been considerably less than total firm contract data collected in preceeding years by the Department of Energy. As a result, the projections for these states are based on the assumption that annual total contract production will be largely achieved a year later than scheduled. To accommodate this assumption, total national production was increased moderately above the bench mark figures from the AEO.

"DOE" 9-YEAR COAL PRODUCTION FORCASTS
(Dated 9/83)

DEC 23 1983

SURFACE MINING - Million Short Tons

STATE NAME	1984	1985	1986	1987	1988	1989	1990	1991	1992	TOTAL
ALABAMA	16.00	17.50	19.80	21.80	23.90	25.30	26.50	26.00	26.00	202.80
ALASKA	1.40	1.60	1.60	1.60	1.60	1.80	2.00	2.40	2.60	16.60
ARKANSAS	0.20	0.30	0.30	0.30	0.30	0.30	0.40	0.50	0.70	3.30
COLORADO	13.00	13.50	13.50	14.00	14.00	14.00	14.00	14.00	14.00	124.00
ILLINOIS	26.10	27.50	27.00	26.00	25.50	25.00	25.00	25.00	25.00	232.10
INDIANA	30.20	30.50	30.80	31.10	31.40	31.70	32.00	32.80	33.60	284.10
IOWA	0.40	0.50	0.50	0.50	0.50	0.50	0.50	0.60	0.60	4.60
KANSAS	1.10	1.30	1.30	1.40	1.40	1.50	1.50	1.60	1.80	12.90
KENTUCKY	70.00	72.00	69.00	67.00	66.00	64.00	62.00	61.00	61.00	592.00
MARYLAND	2.20	2.50	2.60	2.70	2.80	2.90	3.00	3.00	3.00	24.70
MISSOURI	5.20	5.50	5.70	6.00	6.10	6.20	6.30	6.40	6.50	53.90
MONTANA	35.00	38.00	40.00	41.00	41.00	42.00	42.00	43.00	44.00	366.00
NEW MEXICO	20.50	21.00	22.00	23.00	24.00	25.00	26.00	28.00	31.00	220.50
N. DAKOTA	19.00	22.00	25.00	26.00	27.00	27.00	27.00	29.00	32.00	234.00
OHIO	22.80	22.80	22.10	21.30	22.00	22.80	23.50	24.10	24.80	206.20
OKLAHOMA	5.00	5.00	5.20	5.40	5.60	5.80	6.00	6.20	6.50	50.70
PENNSYL.	45.80	48.70	46.60	45.50	44.40	43.30	42.20	41.10	40.00	397.60
TENNESSEE	4.20	4.50	4.60	4.70	4.80	4.90	5.00	5.00	5.00	42.70
TEXAS	39.00	41.00	45.00	50.00	56.00	61.00	68.00	71.00	74.00	505.00
UTAH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
VIRGINIA	7.00	7.00	6.50	6.10	5.70	5.30	5.00	4.70	4.50	51.80
W. VIRGINIA	26.00	28.00	28.50	29.30	30.10	30.80	31.60	32.70	33.70	270.70
WYOMING	118.50	124.50	132.40	140.30	145.20	147.10	153.00	157.00	161.00	1279.00
CROW TRIBE										0.00
HOPI TRIBE										0.00
NAVAJO TR.										0.00
SUB TOTAL	508.60	535.20	550.00	565.00	579.30	588.20	602.50	615.10	631.30	5175.20
POTENTIAL FEDERAL PROGRAM STATES										
ARIZONA	12.20	12.40	12.40	12.40	12.40	12.40	12.40	12.40	12.40	111.40
CALIFORNIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GEORGIA	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	2.70
IDAHO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MASS.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MICHIGAN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NEVADA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N. CAROLINA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RHODE IS.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S. DAKOTA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WASHINGTON	4.40	4.60	4.60	4.60	4.70	4.80	5.00	5.00	5.00	42.70
ZUNI TR.										0.00
SUB TOTAL	16.90	17.30	17.30	17.30	17.40	17.50	17.70	17.70	17.70	156.80
NATL TOTALS	525.50	552.50	567.30	582.30	596.70	605.70	620.20	632.80	649.00	5332.00

NOTE: ESTIMATED COAL PRODUCTION FOR TRIBES IS NOT PROVIDED BY "DOE"

SURFACE TONNAGE FOR NORTH DAKOTA AND TEXAS IS FOR LIGNITE

DEC 23 19[illegible]

"DOE" 9-YEAR COAL PRODUCTION FORECASTS
(Dated 9/83)

STATE NAME	1984	1985	1986	1987	1988	1989	1990	1991	1992	TOTAL
	UNDERGROUND MINING - Million Short Tons									
ALABAMA	9.00	9.50	9.20	9.70	10.10	10.70	11.50	12.00	12.00	93.70
ALASKA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ARKANSAS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
COLORADO	5.50	6.50	6.50	7.00	9.00	11.00	13.00	14.00	15.00	87.50
ILLINOIS	36.90	38.50	40.00	40.50	42.00	43.50	45.00	48.00	51.00	385.40
INDIANA	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	14.40
IOWA	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.20	1.00
KANSAS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KENTUCKY	80.00	87.00	93.00	98.00	103.00	109.00	116.00	122.00	127.00	935.00
MARYLAND	1.80	2.00	2.00	2.20	2.20	2.20	2.20	2.30	2.40	19.30
MISSOURI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MONTANA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NEW MEXICO	0.50	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	8.50
N. DAKOTA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
OHIO	11.20	11.20	10.90	10.70	11.00	11.20	11.50	11.90	12.20	101.80
OKLAHOMA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PE[illegible]	31.70	38.80	43.90	48.00	52.10	56.20	60.30	63.40	67.50	461.90
TENNESSEE	4.20	4.50	4.60	4.70	4.80	4.90	5.00	5.00	5.00	42.70
TEXAS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
UTAH	16.00	18.00	19.00	21.00	22.00	23.00	24.00	25.00	26.00	194.00
VIRGINIA	30.00	32.00	33.50	34.40	35.30	36.20	37.00	38.30	39.50	316.20
W. VIRGINIA	100.00	104.00	107.50	111.70	115.90	121.20	126.40	132.30	138.30	1057.30
WYOMING	1.50	1.50	1.60	1.70	1.80	1.90	2.00	2.00	2.00	16.00
CROW TRIBE										0.00
HOPI TRIBE										0.00
NAVAJO TR.										0.00
SUB TOTAL	329.20	355.60	374.00	392.10	411.90	433.90	457.00	479.50	501.50	3734.70
	POTENTIAL FEDERAL PROGRAM STATES									
ARIZONA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CALIFORNIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GEORGIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
IDAHO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MASS.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MICHIGAN	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NEVADA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N. CAROLINA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RHODE IS.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S. DAKOTA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WASHINGTON	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ZUNI TR.										0.00
SUB TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NATL TOTALS	329.20	355.60	374.00	392.10	411.90	433.90	457.00	479.50	501.50	3734.70

NOTE: ESTIMATED COAL PRODUCTION FOR TRIBES IS NOT PROVIDED BY "DOE"

ATTACHMENT 2

(COLLECT)

JAN 10 1984

ABANDONED MINE LANDS RECLAMATION FUND SUMMARY

State/	******** Actual Fund Collection Summary in $000 **************						FY-78 Thru FY-83	FY-84 To FY-92	Est 15-Yr St + Fed
Tribe	FY-78	FY-79	FY-80	FY-81	FY-82	FY-83	Collect.	Est Recpts	Contrib.
Alabama	2644	5762	6551	5870	7666	6696	35189	85035	120224
Alaska	197	256	246	291	286	282	1558	5810	7368
Arizona 1/						0	0	38990	38990
Arkansas	76	128	77	84	44	36	445	1155	1600
California						0	0	0	0
Colorado	2484	4464	5039	5845	5726	4818	28376	56525	84901
Georgia	10	8	5	1	2	26	52	945	997
Illinois	6657	14796	15263	11568	14939	13898	77121	139045	216166
Indiana	4798	9426	10127	9073	11197	10119	54740	101595	156335
Iowa	87	145	222	200	258	135	1047	1760	2807
Kansas	363	305	275	305	514	547	2309	4515	6824
Kentucky	20385	31177	34643	34522	38604	31458	190789	347450	538239
Maryland	500	793	828	1167	1051	762	5101	11540	16641
Michigan						0	0	0	0
Missouri	1052	2378	1988	1674	1895	1657	10644	18865	29509
Montana	5374	10828	7387	10238	9277	8215	51319	128100	179419
New Mex. 2/	1085	5788	1956	3853	3037	3034	18753	78450	97203
North Dakota	915	1260	1638	1769	1744	1750	9076	23400	32476
Ohio	7501	11911	11892	9719	11591	9315	61929	87440	149369
Oklahoma	1266	1806	1743	1796	1970	1226	9807	17745	27552
Pennsylvania	12323	22949	22604	21029	23498	17766	120169	208445	328614
Rhode Island						0	0	0	0
South Dakota						0	0	0	0
Tennessee	1636	2048	2424	2347	2094	1552	12101	21350	33451
Texas	1158	2295	2642	3260	3512	3721	16588	50500	67088
Utah	768	1571	1841	1953	2498	2012	10643	29100	39743
Virginia	4506	5943	6623	6652	7474	6062	37260	65560	102820
Washington	1329	1604	1789	1638	1633	1425	9418	14945	24363
W. Virginia	9711	19578	21212	18583	26653	25502	121239	253340	374579
Wyoming	13846	21516	30300	33889	36387	39064	175002	450050	625052
Crow Tribe	1177	1633	972	1202	1272	1298	7554	8100	15654
Hopi Tribe	244	392	589	456	507	492	2680	2880	5560
Navajo Tribe	3337	4810	7899	6795	7231	7629	37701	33840	71541
U.S. Total	105429	185570	198775	195779	222560	200497	1108610	2286475	3395085

1/ Mining only on Indian lands

2/ New Mexico was erroneously credited with collections from Indian lands during prior years. Full adjustment was made during FY 1980.

DEC 23 1983

1984-1992 ESTIMATED RECLAMATION FUND RECEIPTS
BASED ON "DOE" COAL PRODUCTION FORCAST (9/83)
($000)

STATE NAME	1984	1985	1986	1987	1988	1989	1990	1991	1992	TOTAL
ALABAMA	6950	7550	8310	9085	9880	10460	11000	10900	10900	85035
ALASKA	490	560	560	560	560	630	700	840	910	5810
ARKANSAS	70	105	105	105	105	105	140	175	245	1155
COLORADO	5375	5700	5700	5950	6250	6550	6850	7000	7150	56525
ILLINOIS	14670	15400	15450	15175	15225	15275	15500	15950	16400	139045
INDIANA	10690	10825	10960	11095	11230	11365	11500	11810	12120	101595
IOWA	155	190	190	190	190	190	190	225	240	1760
KANSAS	385	455	455	490	490	525	525	560	630	4515
KENTUCKY	36500	38250	38100	38150	38550	38750	39100	39650	40400	347450
MARYLAND	1040	1175	1210	1275	1310	1345	1380	1395	1410	11540
MISSOURI	1820	1925	1995	2100	2135	2170	2205	2240	2275	18865
MONTANA	12250	13300	14000	14350	14350	14700	14700	15050	15400	128100
NEW MEXICO	7250	7500	7850	8200	8550	8900	9250	9950	11000	78450
N. DAKOTA	1900	2200	2500	2600	2700	2700	2700	2900	3200	23400
OHIO	9660	9660	9370	9060	9350	9660	9950	10220	10510	87440
OKLAHOMA	1750	1750	1820	1890	1960	2030	2100	2170	2275	17745
PENNSYL.	20785	22865	22895	23125	23355	23585	23815	23895	24125	208445
TENNESSEE	2100	2250	2300	2350	2400	2450	2500	2500	2500	21350
TEXAS	3900	4100	4500	5000	5600	6100	6800	7100	7400	50500
UTAH	2400	2700	2850	3150	3300	3450	3600	3750	3900	29100
VIRGINIA	6950	7250	7300	7295	7290	7285	7300	7390	7500	65560
W. VIRGINIA	24100	25400	26100	27010	27920	28960	30020	31290	32540	253340
WYOMING	41700	43800	46580	49360	51090	51770	53850	55250	56650	450050
CROW TRIBE										8100
HOPI TRIBE										2880
NAVAJO TR.										33840
SUB TOTAL	212890	224910	231100	237565	243790	248955	255675	262210	269680	2231595
POTENTIAL FEDERAL PROGRAM STATES										
ARIZONA	4270	4340	4340	4340	4340	4340	4340	4340	4340	38990
CALIFORNIA	0	0	0	0	0	0	0	0	0	0
GEORGIA	105	105	105	105	105	105	105	105	105	945
IDAHO	0	0	0	0	0	0	0	0	0	0
MASS.	0	0	0	0	0	0	0	0	0	0
MICHIGAN	0	0	0	0	0	0	0	0	0	0
NEVADA	0	0	0	0	0	0	0	0	0	0
N. CAROLINA	0	0	0	0	0	0	0	0	0	0
RHODE IS.	0	0	0	0	0	0	0	0	0	0
S. DAKOTA	0	0	0	0	0	0	0	0	0	0
WASHINGTON	1540	1610	1610	1610	1645	1680	1750	1750	1750	14945
ZUNI TR.										0
SUB TOTAL	5915	6055	6055	6055	6090	6125	6195	6195	6195	54880
NATL TOTALS	218805	230965	237155	243620	249880	255080	261870	268405	275875	2286475

NOTE: ESTIMATED COAL PRODUCTION FOR TRIBES IS NOT PROVIDED BY "DOE"
FEES ESTIMATED FOR TRIBES BASED ON PREVIOUS 1984-1992 ESTIMATES

NORTH DAKOTA AND TEXAS ESTIMATED RECEIPTS BASED ON SURFACED MINED LIGNITE

DEC 23 1983

1984-1992 ESTIMATED TOTAL & STATE SHARE RECEIPTS
FOR AML PROGRAM STATES
(Using "DOE" 9/83 Coal Production Estimates"

STATE NAME	9-YEAR TOTAL	PERCENT	50% STATE SHARE
ALABAMA	85035	3.81	42518
ALASKA	5810	0.26	2905
ARKANSAS	1155	0.05	578
COLORADO	56525	2.53	28263
ILLINOIS	139045	6.23	69523
INDIANA	101595	4.55	50798
IOWA	1760	0.08	880
KANSAS	4515	0.20	2258
KENTUCKY	347450	15.57	173725
MARYLAND	11540	0.52	5770
MISSOURI	18865	0.85	9433
MONTANA	128100	5.74	64050
NEW MEXICO	78450	3.52	39225
N. DAKOTA	23400	1.05	11700
OHIO	87440	3.92	43720
OKLAHOMA	17745	0.80	8873
PENNSYL.	208445	9.34	104223
TENNESSEE	21350	0.96	10675
TEXAS	50500	2.26	25250
UTAH	29100	1.30	14550
VIRGINIA	65560	2.94	32780
W. VIRGINIA	253340	11.35	126670
WYOMING	450050	20.17	225025
CROW TRIBE	8100	0.36	4050
HOPI TRIBE	2880	0.13	1440
NAVAJO TR.	33840	1.52	16920
TOTAL	2231595	100.00	1115798
	AVERAGE %	3.85	

NOTE: Estimated receipts for Texas and North Dakota are based on surfaced mined lignite.

ATTACHMENT 3

*TOTAL STATE PROGRAM EXPENDITURES
(Secretary Discretionary Fund)
(1977-9/30/83)

	RAMP	Emergency and[1/] Miscellaneous	CO-OP[2/] Agreement	SOAP[3/] Grants	Total Project
Alabama	2,649,910	3,450,099	476,404	300,000	6,876,413
Alaska	786	86,227	223,659	—	311,458
Arizona	1,998	330,000	—	—	381,998
Arkansas	2,096,456	145,836	157,761	49,525	2,449,578
California	1,413	809,518	—	—	810,931
Colorado	16,055	482,976	1,136,457	62,500	1,697,888
Georgia	10,528	28,887	—	—	39,415
Illinois	1,703,451	4,790,713	1,081,754	1,302,000	8,877,918
Indiana	861,744	952,217	758,198	—	2,572,159
Iowa	7,185,279	140,527	121,045	63,040	7,509,891
Kansas	972,462	1,954,240	150,330	48,000	3,125,032
Kentucky	6,092,551	16,188,976	1,178,660	4,695,964	28,156,151
Maryland	1,448,543	1,419,707	70,794	845,000	3,784,044
Michigan	235	25,000	—	—	25,235
Missouri	2,440,900	5,175,700	318,145	138,000	8,072,745
Montana	174,530	495,855	220,047	—	890,432
New Mexico	3,407	554,027	505,575	—	1,063,009
North Dakota	834,041	1,313,116	721,729	—	2,868,886
Ohio	7,004,691	9,426,298	1,097,130	699,000	18,227,119
Oklahoma	2,854,678	840,345	542,451	—	4,237,474
Pennsylvania	18,694,137	39,905,233	518,813	1,000,000	60,118,183
Rhode Island	—	185,428	—	—	185,428
South Dakota	275,687	—	—	—	275,687
Tennessee	664,300	6,253,954	255,976	—	7,174,230
Texas	1,429,593	770,050	53,284	—	2,252,927
Utah	14,114	74,098	467,102	—	555,314
Virginia	507,593	6,133,001	1,626,594	2,609,000	10,876,188
Washington	—	139,541	—	—	139,541
West Virginia	8,568,834	14,128,743	4,236,746	4,932,000	31,866,323
Wyoming	2,542,236	811,443	1,338,673	41,270	4,733,622
Tribes	—	—	—	1,813,578	1,813,578
TOTAL	69,050,152	117,061,655	19,070,905	16,785,299	221,968,797

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* The figures reflect only project costs and those administrative costs included under footnote 2/. Other administrative costs are not broken out by State.

1/ Does not include Appalachian Regional Commission, Bureau of Mines, or Coal Outcrop Project Funds.

2/ Total amount for "Plan Preparation Agreement" and "First Annual Project Submission".

3/ Most recent figures available at this time are thru 7/30/83.

APPROPRIATIONS/OBLIGATIONS
(AML)

FISCAL YEAR	OBJECT CLASS	ACTIVITY									
		Fund Management		Federal Projects		Technical Support		RAMP		General Admin.	
		Appr.	Obl.	Appr.	Obl.	Appr.	Obl.	Appr.	Obl.	Appr.	[illegible]
1978	Personnel		133,841		429,856		64,695		243,000		
	Travel		9,926		50,822		4,510		55,000		
	Other		476,887		3,304,323		160,396		4,692,000		
	Total	4,784,000	620,654	15,875,000	3,784,731	988,000	229,601	5,000,000	4,990,000		
1979	Personnel		2,112,765		2,781,586		199,372		2,460,000		
	Travel		215,740		223,379		12,888		183,000		
	Other		1,435,454		8,743,841		541,770		7,778,000		
	Total	8,690,000	3,763,959	21,825,000	11,748,806	808,000	754,030	10,128,000	10,421,000	2,579,000	
1980	Personnel		2,248,147		3,297,427		671,534		2,973,000		
	Travel		209,043		249,275		15,603		57,000		
	Other		9,454,249		54,527,068		388,392		9,685,000		
	Total	9,124,000	11,911,439	39,449,000	58,073,770	1,237,000	1,075,529	10,106,000	12,715,000	5,480,000	
1981	Personnel		3,460,454		4,213,163		976,057		3,886,000		
	Travel		244,853		243,630		53,044		163,000		
	Other		4,186,222		12,508,388		68,744		7,262,000		
	Total	5,383,000	7,891,529	31,170,000	16,965,181	1,652,000	1,097,845	10,280,000	11,311,000	3,945,000	
1982	Personnel		3,359,337		3,050,188		455,770		2,588,000		
	Travel		180,252		190,314		9,739		70,000		
	Other		2,079,366		23,924,872		496,511		14,979,000		
	Total	4,724,000	5,618,955	28,040,000	27,165,374	1,134,000	962,020	*5,088,000	17,637,000	3,960,000	
1983	Personnel		3,736,061		3,076,075		761,832		3,646,000		7,138,360
	Travel		291,880		354,475		142,313		89,000		450,382
	Other		526,204		42,914,928		929,694		1,548,000		1,079,416
	Total	4,901,000	4,554,145	24,680,000	46,345,478	1,221,000	1,833,839	6,115,000	5,283,000	3,960,000	8,668,158

*Actual total for FY 1982 was $18,339 which included $13,251 from the FY 1982 Supplemental Appropriations.

Attachment 4

ESTIMATE OF FEDERAL EXPENSES

FY 1984 - FY 1992

$ 59,400	Administratvie Cost, Fund Management
$ 9,900	Administrative Cost, Technical Support
$ 33,750	Administrative Cost, Interior Projects
$ 84,150	Project Costs, SOAP
$ 23,400	Research and Development Projects
$ 90,000	Project Costs: Emergencies, Non-Emergencies
$300,600	TOTAL ADJUSTMENTS TO FEDERAL SHARE ($000)

ATTACHMENT 5

Subtasks	Target Date	Expected Date	No. of Slips	Completion Date	Responsible Persons	Status
7. Evaluate cases for criminal penalty					Close/Stone	
a. for cases involving corporations, refer determinations for criminal penalties to SOL	04/15/84					
b. for cases involving noncorporations, determine if criminal action should be initiated	11/01/84					
c. for cases involving noncorporations, refer determinations for criminal penalties to SOL.	12/01/84				Close/Stone	
8. Evaluate cases for injunction						
a. for cases involving corporations where criminal action against individuals has been determined, refer to SOL	04/15/84					
b. for cases involving noncorporations, make determinations	11/01/84					
c. refer cases from subtask b to SOL	12/01/84					
Civil Penalties						
9. Issue Notice of Proposed Assessment of civil penalties for violations referred from subtasks 1 and 6	04/01/84				Schmidt/ Pavetto	
a. After referral of written determination issue Notice of Proposed Assessment	0 + 30 days				Schmidt/ Pavetto	
b. Hold informal assessment conference, if requested by operator. 1/	0 + 60 days				Field Office Directors	
c. Issue Final Order for Payment after receipt of decision from the Office of hearings and appeals	0 + 60 days				Schmidt/ Pavetto	

1/ Time between step b and step c is usually 1-1/2 to 2 years.

Subtasks	Target Date	Expected Date	No. of Slips	Completion Date	Responsible Persons	Status
10. Issue Final Demand for Payment if debt becomes delinquent	0 + 15 days				Schmidt/ Pavetto	
11. Refer delinquent debt cases to the contractor for collection	0 + 15 days				Schmidt/ Pavetto	
12. a. If contractor recommends write-off, make preliminary uncollectibility determination and if amount is less than $600 — write-off; if amount is greater than $600 transmit memo to Solicitor asking for recommendation	0 + 30 days				Schmidt/ Pavetto Baynard/ Moeller	
b. If contractor recommends further collection action, refer case to the Solicitor for legal action	0 + 30 days				Schmidt/ Pavetto	
13. a. OSM refers case; Solicitor files complaint for collection	0 + 30 days				Baynard/ Moeller	
b. Solicitor's request for income/assets report on delinquent debtor; OSM refers request to contractor who investigates	0 + 10 days				Schmidt/ Pavetto	
c. Refer contractor information to Solicitor	0 + 5 days				Schmidt/ Pavetto	
d. Solicitor obtains judgment	Set by court				Baynard/ Moeller	
e. Solicitor's request for detailed income/ assest report on delinquent debtor; OSM refers request to contractor who investigates and makes detailed report	0 + 10 days				Schmidt/ Pavetto	
14. Adjust accounts receivable to reflect payment or write-off after payment or uncollectability determination	0 + 30 days				Schmidt/ Pavetto	

STATISTICAL SUMMARY REPORT
STATE/INDIAN RECLAMATION PROGRAMS
Status of Federal Assistance for Reclamation Plan Preparation, First Annual Project Submission and Grant Awards

Total Amount Awarded - September 30, 1982 - $107,166,827.58

I. Plan Preparation Awards - $5,927,428.05
(Cooperative Agreements)

II. First Annual Project Submission - $9,184,370.18
(Cooperative Agreements)

III. Grant Awards $92,055,029.35
Total # of Projects approved - 246

State	Plan Preparation Award	Eff. Date	Expir. Date	Status of Close Out Reports	Annual Submission Projects Awards	Eff. Date	Expir. Date	Grant Awards	Type of Award*	Eff. Date	Expir. Date
1. Oklahoma	74,650.94	3/3/79	11/30/79	71,448.39	205,598.04	5/05/81	12/04/82	$ 337,632.32	Admin.	5/1/82	5/1/83
								1,251,298.72	Const.	8/12/82	8/11/85
*2. Missouri	84,085.88	3/27/79	12/31/79	64,620.78	253,524.00	1/16/81	7/15/82	630,596.00	Admin.	7/1/82	6/30/83
								2,915,144.11	Const.	7/1/82	6/30/85
3. Texas	81,980.00	3/30/79	12/31/79	53,283.65							
4. Tennessee	146,491.00	4/10/79	9/30/82		109,485.[illegible]	11/18/80	6/30/82	316,735.00	Admin.	8/3/82	8/2/83
								847,632.00	Const.	8/3/82	8/2/85
*5. Kentucky	569,617.00	4/23/79	6/30/79		712,367.00	3/02/81	9/02/82	1,487,427.00	Admin.	5/18/82	5/18/83
								14,406,526.00	Const.	5/18/82	5/18/85
*6. Virginia	203,081.81	4/26/79	12/31/80	182,677.00	1,443,927.35	8/15/80	4/15/82(1)	1,740,864.00	Admin.	3/1/82	2/28/83
								5,948,141.00	Const.	3/1/82	2/28/85
*7. Arkansas	60,000.00	5/2/79	12/31/79	29,768.80	127,992.00	6/17/81	9/30/82				
8. New Mexico	227,905.00	5/31/79	12/30/80	(1)	222,492.00	5/20/81	9/30/82	438,715.00	Admin.	3/22/82	3/22/83
								364,355.00	Admin.	7/01/82	6/30/83
9. Iowa	25,000.00	6/12/79	3/31/80	7,600.00							
10. Ohio	341,300.00	7/5/79	3/31/82	(1)	735,830.00	5/18/81	9/30/82	1,485,034.00	Admin.	7/01/82	7/01/83
								10,965,250.00	Const.	8/03/82	8/02/85
11. Montana	220,047.75	7/9/79	5/31/81	220,047.75				273,926.00	Admin.	6/29/81	6/18/82
								1,117,820.00	Admin.	6/19/82	6/18/83
								5,654,197.00	Const.	7/23/82	7/22/85
12. West Virginia	413,479.00	8/17/79	3/01/81	82,302.00	1,397,635.00	1/27/81	11/30/81	10,741,005.00	Const.	8/1/81	7/31/84
								1,693,515.00	Admin.	8/1/81	9/30/82
								818,050.00	(R&D)	5/10/82	5/10/85
*13. Illinois	130,000.00	8/17/79	6/30/82	(1)	951,754.00	9/25/80	12/31/82	596,299.00	Admin.	6/1/82	1/31/83
								4,344,390.00	Const.	6/1/82	5/31/85
14. Crow Tribe	181,749.00	8/24/79	9/30/80	181,749.00	560,003.79	8/31/81	6/06/83				
*15. Alabama	176,300.00	8/31/79	3/30/82		300,104.00	3/02/81	10/1/82(1)	963,214.00	Admin.	5/14/82	5/13/83
								3,013,788.00	Const.	5/14/82	5/13/85
16. Colorado	688,674.00	10/01/79	3/31/82		447,693.00	1/19/81	12/18/82	628,243.00	Admin.	8/10/82	8/10/83
								552,397.00	Const.	8/10/82	8/10/85
*17. Wyoming	897,882.00	12/18/79	4/18/82		388,782.00	8/08/81	10/01/82				
18. Kansas	28,800.00	01/01/80	6/24/82								
19. North Dakota	250,801.00	5/27/80	5/21/81	250,766.28	470,963.00	7/01/81	10/01/82				
20. Hopi Tribe	205,149.00	9/18/80	6/18/82	204,895.22	**114,968.00	5/10/82	5/10/83				
21. Pennsylvania	259,820.00	10/14/80	9/30/82					1,705,079.00	Admin.	7/13/82	7/12/83
								9,541,667.00	Const.	10/1/82	9/30/85
22. Navajo Tribe	259,722.00	6/11/81	1/25/83								
*23. Indiana	107,740.67	8/31/81	8/30/82		650,458.00	6/24/81	12/31/82	391,054.00	Admin.	7/29/82	7/28/83
								6,108,327.00	Const.	7/29/82	7/28/85
24. Maryland					70,794.00	3/06/81	9/30/82	576,748.00	Admin.	10/1/82	9/30/83
25. Utah	192,713.00	4/29/82	4/29/83								
26. Michigan	100,439.00	7/11/82	7/11/83								

*Amendment Requested
(See Part VI)

(1) CA's have expired; Final Reports have not been received in Headquarters.
(2) Incomplete Close Out Report received in Headquarters.

**An additional $100,111 has been funded by the Regulatory Program for this agreement.

#3677A

DIVISION OF GRANTS ADMINISTRATION
BRANCH OF GRANTS MANAGEMENT
FY 1983 GRANT AWARDS
AML GRANTS

Type of Grant	Number of States Awarded	Total Amount
Plan Preparation	1	$ 114,000
Plan Preparation Agreement Amendment	2	$ 154,748
First Annual Project Submission	8	$ 3,741,136
First Annual Project Submission Amendment	6	$ 478,978
AML Administration	20	$ 18,417,733
AML Administration Admendment	6	$ 1,508,127
AML Construction	19	$ 84,425,424
AML Construction Amendment	8	$ 42,190,523
		$151,030,669
RAMP Construction	16	$ 15,060,168

L. Rosner 9/30/83

PLAN PREPARATATION AGREEMENT FOR FY 1983

State	Date	Amount		Letter of Credit **	Grant Number	Grant Period
Alaska	10/14/82	$114,000			C51 2 9562	10/14/82-10/13/83
Amend I	04/27/82	32,592	(Indirect Cost)			
		$146,592				
Utah	01/23/83	$122,156			G51 2 9491	04/29/82-04/29/83
Amend 1*			Total Grant Award $314,869			

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*FY 1983

**If a Letter-of-Credit amount is not indicated, the Letter-of-Credit amount is the same as the grant award.

FIRST ANNUAL PROJECT SUBMISSION - FOR FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Alaska	06/22/83	$ 77,067		C51 3 9023	06/01/83-12/31/83
Crow Tribe					
Amend. IV*	01/19/83	$ 112,381		C51 1 0080	05/03/82-09/30/83
Amend. V*	01/19/83	37,504			
Amend. VI*	06/02/83	84,176			
		$ 234,061			
		Total Grant Award $793,998			
Crow Tribe	08/18/83	$ 87,627 (Title IV)		C51 4 4820	10/01/83-09/30/84
		Total Grant Award $219,996			
Hopi					
Amend. I*	07/08/83	$ 12,670		C51 2 9002	05/10/82-09/30/83
		Total Grant Award $246,579			
Hopi	09/29/83	$ 83,726 (Title IV)		C51 3 4800	10/01/83-09/30/84
		Grand Total Award $194,838			
Iowa	03/01/83	$ 113,445		G51 3 9193	03/01/83-12/31/83
Navajo Tribe	05/03/83	$ 245,255		G51 3 7811	01/27/83-01/26/84
New Mexico	12/08/82	$ 55,178 (Indirect Cost)		C51 1 0054	05/20/81-09/30/82
		Total Grant Award $277,670			
Pennsylvania	12/02/82	$ 258,993		C51 3 5423	01/15/82-01/14/83
Utah	01/23/83	$ 118,214		C51 3 9493	01/23/83-01/23/84
Amend. I	04/26/83	$ 34,019			
		$ 152,333			
W. Virginia	10/07/82	$2,756,809		G51 2 7541	10/01/82-09/30/83

FIRST ANNUAL PROJECT SUBMISSION - FOR FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Wyoming	10/01/82	$ 5,000(Audit)		C51 1 0075	08/11/81-07/01/83
	01/25/83	$ 42,009 (Indirect Cost)			
		$ 47,009			
Amend. VI*	04/04/83	$ 96,041			
		Total Grant Award $531,832			

AML ADMINISTRATION GRANTS - FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Alabama	04/28/83	$ 971,499		G51 3 7011	05/14/83-05/13/84
Arkansas	08/23/83	$ 146,928		G51 3 7051	07/01/83-06/30/84
Colorado	07/12/83	$1,740,078		G51 3 7081	08/11/83-08/10/84
Illinois	02/10/83	$1,039,132		G51 3 7171	02/01/83-01/31/84
Indiana Amend I*	10/14/82	$ 50,000		G51 2 7181	07/29/82-07/29/83
Indiana	08/01/83	$ 778,261		G51 3 7181	07/29/83-07/28/84
Kansas	01/06/83	$ 77,663		G51 3 7201	01/1/83-12/31/83
Kentucky	05/17/83	$1,900,538		G51 3 7211	05/18/83-05/18/84
Maryland	03/03/83	$ 17,682 (Indirect Costs) Total Grant Award $594,430		G51 2 7241	10/01/82-09/30/83
Missouri Amend I*	10/21/82	$ 525,866 Total grant Award $1,156,462		G51 2 7291	07/01/82-06/30/83
Missouri	04/04/83	$1,039,758		G51 3 7291	07/01/83-06/30/84
Montana	05/05/83	$1,233,619		G51 3 7301	06/19/83-06/19/84

AML ADMINISTRATION GRANTS - FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
New Mexico	11/08/82	$ 87,415(Indirect Cost Adjustment)		G51 2 7353	07/1/82-06/30/83
New Mexico	06/22/83	$ 915,888		G51 3 7351	08/01/83-07/31/84
North Dakota	12/30/82	$ 669,456		G51 3 7381	10/01/82-09/30/83
Ohio	07/25/83	$1,548,128		G51 3 7391	07/01/83-06/30/84
Oklahoma	04/11/83	$ 390,261		G51 3 7401	05/01/83-05/01/84
Pennsylvania	07/28/83	$3,676,926		G51 3 7421	07/01/83-06/30/84
Pennsylvania Amend. I*	02/10/83 07/08/83	$ 421,524 208,042 (Indirect Cost Adjustment) Total Grant Award $2,126,603		G51 2 7421	02/13/82-07/12/83
Tennessee Amend. I*	07/08/83 07/06/83	$ 45,734 24,920 (Indirect Cost Adjustment) Total Grant Award $362,469		G51 2 7471	08/03/82-09/30/83
Texas Amend. I	03/07/83 04/21/83	$ 83,910 Change in grant period		G51 3 7481	11/01/82-10/31/83
Texas	03/08/83	$ 131,399		G51 3 7480	03/01/83-02/29/84
Utah	06/07/83	$ 388,869		G51 3 7491	06/01/83-05/31/84

AML ADMINISTRATION GRANTS - FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Virginia	01/13/83	$ 114,444 (Indirect Cost Adjustment)		G51 2 7511	03/10/82-02/28/83
Amend. I	11/02/82	12,500			
		Total grant Award $1,753,364			
Virginia	03/17/83	$1,374,762		G51 3 7511	04/01/83-03/31/84
Wyoming	03/03/83	$ 310,658		G51 3 7561	02/14/83-02/13/84

AML CONSTRUCTION GRANT - FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Alabama Amend I *	04/19/83	$ 714,879 Total Grant Award $3,728,667		G51 2 7012	05/14/82-05/12/85
Alabama Amend I	06/09/83 08/12/83	$ 3,313,622 $ 3,443,292 $ 6,756,914		G51 3 7012	05/14/83-05/13/86
Colorado	06/07/83	$ 5,123,285		G51 3 7082	06/01/83-05/31/86
Illinois	03/09/82	$ 5,499,300		G51 3 7172	02/01/83-01/31/86
Indiana Amend. I	07/27/83 08/09/83	$ 5,571,739 5,052,499 $10,624,238		G51 3 7182	07/27/83-07/26/86
Kansas	08/01/83	$ 649,017		G51 3 7202	09/01/83-08/31/86
Kentucky Amend I *	10/10/82	$ 1,086,635 Total Grant Award $15,493,161		G51 2 7212	05/18/82-05/18/85
Kentucky Amend I	06/02/83 08/12/83	$18,087,875 $ 7,472,690 $25,559,565		G51 3 7212	05/18/83-05/18/86
Maryland	06/07/83	$ 154,250		G51 3 7242	06/01/83-05/31/86
Missouri	04/14/83	$ 1,985,250		G51 3 7292	07/01/83-06/30/86
Montana Amend I	03/28/83 06/07/83	$ 224,020 (Non-Coal) $ 3,289,020 $ 3,513,040		G51 3 7302	02/18/83-02/17/86 07/23/82-02/17/86

*FY 1983 Monies

AML CONSTRUCTION GRANT - FY 1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
New Mexico	03/16/83	$ 1,941,000		G51 3 7352	03/01/83-02/29/84
North Dakota	02/03/83	$ 1,230,136		G51 3 7382	10/01/82-09/30/85
Ohio	09/30/83	$10,532,650		G51 3 7392	10/01/83-09/30/86
Oklahoma	12/27/82	$ 1,624,292		G51 3 7402	03/01/83-02/28/86
Pennsylvania	05/20/83	$15,555,039		G51 3 7422	06/01/83-05/31/86
	07/08/83	$ 176,908 (Indirect Cost Adjustment)		G51 2 7422	
		Total Grant Award $9,541,667			
Texas	08/18/83	$ 312,309		G51 3 7482	08/29/83-08/28/86
Utah	07/26/83	$ 974,400		G51 3 7492	09/01/83-02/28/84
Virginia	07/18/83	$ 3,257,900		G51 3 7512	05/15/83-05/14/86
West Virginia	05/17/83	$ 8,000,000		G51 3 7542	06/01/83-05/31/86
Amend I	08/11/83	$ 9,834,000			
		$17,834,000			
Wyoming	06/07/83	$ 389,340		G51 3 7562	06/15/83-06/14/86
Amend. I	07/12/83	2,463,784			
Amend II	09/26/83	8,656,816			
		$11,509,940			

*FY 1983 Monies

GRANT AGREEMENT FOR RAMP CONSTRUCTION FY-1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Alabama	5/13/83	$ 351,000		G51 3 7013	05/15/83-05/15/84
Arkansas	05/13/83	$ 432,383	$425,830.00	G51 3 7053	07/01/83-07/01/86
Illinois Amend I to Const. Gt.	5/13/83	$ 226,200 (RAMP) Total Grant $5,725,500		G51 3 7172	02/01/83-01/31/85
Iowa	05/13/83	$2,549,000		G51 3 7193	05/15/83-05/14/86
Kansas	05/13/83	$ 702,909		G51 3 7203	07/15/83-07/14/86
Kentucky	05/13/83	$ 370,500		G51 3 7213	05/15/83-05/15/86
Maryland	05/13/83	$ 460,048		G51 3 7243	06/01/83-05/30/86
Missouri	05/13/83	$ 853,170		G51 3 7293	05/15/83-05/14/86
North Dakota	05/13/83	$ 460,069		G51 3 7383	07/01/83-07/01/86
Ohio Amend I to Const. Gt.	05/13/83	$ 380,000 Total Grant Award $11,345,250		G51 2 7392	05/15/83-08/15/85

GRANT AGREEMENT FOR RAMP CONSTRUCTION FY-1983

State	Date	Amount	Letter of Credit **	Grant Number	Grant Period
Oklahoma	05/13/83	$ 750,000		G51 3 7403	06/01/83-06/01/86
Pennsylvania	05/13/83	$5,195,177		G51 3 7423	06/01/83-06/01/86
Amend I	09/26/83	60,168			
		$5,255,345			
Tennessee Amend I to Const. Gt.	05/13/83	$ 172,263 Total Grant Award $1,019,895.00		G51 2 7472	08/03/83-08/02/85
Virginia	05/13/83	$ 127,275		G51 3 7513	05/15/83-05/15/86
West Virginia	05/13/83	$1,765,000		G51 3 7543	06/01/83-05/31/86
Wyoming	5/13/83	$ 205,006		G51 3 7563	05/15/83-10/25/83

ATTACHMENT 6

DESCRIPTION OF THE APPORTIONMENT PROCESS

The following is a description of the apportionment process used by OSM in determining that amount each State/Tribe could receive from the Abandoned Mine Land (AML) Reclamation Fund (Fund) over the remaining life of the Fund.

It is important to remember that this process relies on the most current estimate of future Fund receipts and existing Priority I and II AML problems. As these estimates may change over time, the apportionment of the Secretarial-share of the Fund periodically will be recalculated in accordance with those steps descriped below and, thereafter, a revised apportionment report will be released.

- Based on DOE projections of surface and underground coal production, the estimated Secretarial-share receipts from FY 1984 through FY 1992 (i.e., 50% of total anticipated Fund receipts) are calculated using the fee-per-ton charges specified in Section 402(a) of the Act. Then the estimated future Federal expenses (i.e., OSM administrative expenses, SOAP, R&D projects, and emergency projects) are subtracted from the estimated Secretarial-share receipts. The result is the amount of Secretarial-share monies to be available for apportionment.

- The available Secretarial-share monies are apportioned (distributed) to each State/Tribe using the estimated costs shown in the National AML Inventory to reclaim all Priority 1 and 2 AML problems in a State/Tribe and the Secretarial-share monies which already have been spent in a State/Tribe (i.e., RAMP, SOAP, emergencies, and non-emergencies).

  Specifically, these two amounts (estimated costs/previous expenditures) are added together for each State/Tribe and summed nationally. Then each State's/Tribe's percentage of the national total is computed. The total Secretarial-share monies estimated to be available for apportionment from FY 1984 through FY 1992 are multiplied by this percentage figure. The result is the preliminary estimate of the total actual dollar amount of Secretarial-share monies each State/Tribes is eligible to receive. (Note: In order to be consistent in its treatment of all States/Tribes, OSM has grouped all potential "Federal Program States" (e.g., Georgia, California, Michigan) together, called that entity "Federal State," and used the combined data for those States in determining the total amount of Secretarial-share monies to be apportioned for use in those States.)

- The final estimate of the total actual dollar amount of Secretarial-share monies each State/Tribe is eligible to receive during the remaining period of fee collection is computed.

  First, the total amount of Secretarial-share monies spent in a State/Tribe from FY 1977 through FY 1983 is subtracted from the preliminary estimate of that State's/Tribe's total Secretarial-share receipts from FY 1984 through FY 1992.

Second, if the amount of Secretarial-share monies each State/Tribe remains eligible to receive is less than $1.0 million, the total is increased to $1.0 million. The funds necessary to provide these extra monies are obtained by proportionately adjusting the preliminary estimate of each State's/Tribe's total Secretarial receipts from FY 1984 through FY 1992.

- The 50% State/Tribal-share monies (both "on hand" and estimated future receipts) are added to each State's/Tribe's Secretarial-share apportionment to determine its total apportionment.

(APPROPNN)

APPORTIONMENT REPORT SUMMARY FYB4-FY92[1]

JAN 10 1984

STATE NAME	FEDERAL SHARE ($000)	STATE SHARE ($000)	TOTAL ($000)	STATE PERCENT OF STD INV $ TO ST TOT	STATE PERCENT OF FED SHARE TO ST TOT	PERCENT OF STATE TOTAL TO NATL TOT	PERCENT OF ST FED SHR TO NATL FED SHR
ALABAMA	23686	47718	71404	19.33	33.17	2.86	2.21
ALASKA	1000	3705	4705	0.21	21.25	0.19	0.09
ARKANSAS	2465	678	3143	35.95	78.43	0.13	0.23
COLORADO	1000	34363	35363	0.34	2.83	1.42	0.09
ILLINOIS	42948	96723	139671	18.69	30.75	5.60	4.01
INDIANA	14962	59898	74860	11.81	19.99	3.00	1.40
IOWA	11811	1280	13091	47.59	90.22	0.53	1.10
KANSAS	6660	2758	9418	39.39	70.72	0.38	0.62
KENTUCKY	55330	224725	280055	10.91	19.76	11.23	5.16
MARYLAND	2543	7570	10113	9.49	25.14	0.41	0.24
MISSOURI	26101	10733	36834	41.65	70.86	1.48	2.44
MONTANA	1000	78050	79050	0.67	1.27	3.17	0.09
NEW MEXICO	2056	42825	44881	2.47	4.58	1.80	0.19
N. DAKOTA	2833	14300	17133	7.30	16.53	0.69	0.26
OHIO	128009	50120	178129	44.48	71.86	7.14	11.95
OKLAHOMA	18757	10173	28930	38.96	64.84	1.16	1.75
PENNSYLVANIA	586816	132823	719639	51.07	81.54	28.86	54.77
TENNESSEE	16704	15475	32179	28.78	51.91	1.29	1.56
TEXAS	1000	32550	33550	0.00	2.98	1.35	0.09
UTAH	1000	18250	19250	0.00	5.19	0.77	0.09
VIRGINIA	11457	38880	50337	10.67	22.76	2.02	1.07
W. VIRGINIA	76796	151370	228166	19.17	33.66	9.15	7.17
WYOMING	24324	300525	324849	4.56	7.49	13.03	2.27
CROW TRIBE	1000	7950	8950	0.00	11.17	0.36	0.09
HOPI TRIBE	1000	2840	3840	0.26	26.04	0.15	0.09
NAVAJO TRIBE	1000	35620	36620	1.26	2.73	1.47	0.09
FED STATES	9246	NA	9246	NA	NA	0.37	0.86
NATL TOTALS	1071504	1421902	2493406	17.11	33.37	100.00	100.00
				*********	*********		
				Natl. Average			

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[1] Louisiana anticipates significant lignite production and payments into the AML Fund beginning in 1985.

NOTE: THE "DOE" COAL PRODUCTION FORECAST DATED 9/83 WAS USED
TO PREDICT THE FY83-FY92 ANTICIPATED REVENUES.

(APPROPRI)

JAN 10 1984

FY84-FY92 ABANDONED MINE LAND RECLAMATION FUND
APPORTIONMENT REPORT

STATE NAME	50% OF ANTIC RECEIPTS FOR FY84-92 ($000)	PREVIOUS STATE BAL OF 9/30/83 ($000)	EST STATE BAL THRU FY92 ($000)	INV 0 + PREV EXP ($000)	PERCENT	FEDERAL SHARE ($000)	STATE SHARE ($000)	TOTAL ($000)	PERCENT OF ST STD INV TO ST TOTAL	FEDERAL SHARE PERCENT	FED SHARE TO "TOTAL" PERCENT	STATE NAME
ALABAMA	42510	5200	47710	22000	2.51	23686	47710	71396	19.33	2.21	33.17	ALABAMA
ALASKA	2905	800	3705	310	0.04	1000	3705	4705	0.21	0.09	21.25	ALASKA
ARKANSAS	578	100	678	3680	0.42	2465	678	3143	35.95	0.23	78.43	ARKANSAS
COLORADO	28263	6100	34363	1920	0.22	1000	34363	35363	0.24	0.09	2.83	COLORADO
ILLINOIS	69523	27200	96723	35000	3.99	42948	96723	139671	18.69	4.01	30.75	ILLINOIS
INDIANA	50798	9100	59898	13340	1.52	14962	59898	74860	11.81	1.40	19.99	INDIANA
IOWA	880	400	1280	13930	1.59	11811	1280	13091	47.59	1.10	90.22	IOWA
KANSAS	2258	500	2758	6960	0.79	6660	2758	9418	39.39	0.62	70.72	KANSAS
KENTUCKY	173725	51000	224725	59050	6.72	55330	224725	280055	10.91	5.16	19.76	KENTUCKY
MARYLAND	5770	1800	7570	4730	0.54	2543	7570	10113	9.09	0.24	25.14	MARYLAND
MISSOURI	9433	1300	10733	23600	2.69	26101	10733	36834	41.65	2.44	70.86	MISSOURI
MONTANA	64050	14000	78050	1630	0.19	1000	78050	79050	0.67	0.09	1.27	MONTANA
NEW MEXICO	39225	3600	42825	2310	0.26	2056	42825	44881	2.47	0.19	4.58	NEW MEXICO
N. DAKOTA	11700	2600	14300	4450	0.51	2833	14300	17133	7.30	0.26	16.53	N. DAKOTA
OHIO	43720	6400	50120	97740	11.13	128009	50120	178129	44.48	11.95	71.86	OHIO
OKLAHOMA	8873	1300	10173	15870	1.81	18757	10173	28930	38.96	1.75	64.84	OKLAHOMA
PENNSYLVANIA	104223	28600	132823	428630	48.81	586816	132823	719639	51.07	54.77	81.54	PENNSYL.
TENNESSEE	10675	4800	15475	17660	2.01	16704	15475	32179	28.78	1.56	51.91	TENNESSEE
TEXAS	25250	7300	32550	2450	0.28	1000	32550	33550	0.00	0.09	2.98	TEXAS
UTAH	14550	3700	18250	600	0.07	1000	18250	19250	0.00	0.09	5.19	UTAH
VIRGINIA	32780	6100	38880	16570	1.89	11457	38880	50337	10.67	1.07	22.76	VIRGINIA
W. VIRGINIA	126670	24700	151370	75930	8.65	76796	151370	228166	19.17	7.17	33.66	W VIRGINIA
WYOMING	225025	75500	300525	19740	2.25	24324	300525	324849	4.56	2.27	7.49	WYOMING
CROW TRIBE	4050	3900	7950	1020	0.12	1000	7950	8950	0.00	0.09	11.17	CROW TRIBE
HOPI TRIBE	1440	1400	2840	323	0.04	1000	2840	3840	0.26	0.09	26.04	HOPI TRIBE
NAVAJO TRIBE	16920	18700	35620	941	0.11	1000	35620	36620	1.26	0.09	2.73	NAVAJO TR
FED STATES	00	00	00	7710	0.88	9246	00	9246	00	0.86	00	FED STATES
NATL TOTALS	1115802	306100	1421902	878134	100.00	1071504	1421902	2493406				
									17.11	3.70	42.97	
									National Averages			

```
     58910  + 100% OF EST. FY84-FY92 FED PGM STATE COLLECTIONS + FED PGM ST PREV BAL
    197392  + PREVIOUS FEDERAL SHARE BALANCE AS OF 9/30/83 FOR NON-FED STATES
 ----------
   1372104  TOTAL FEDERAL SHARE ($000)
    300600  MINUS ADJUSTMENTS
0000000000000000
0    1071504  =  TOTAL FEDERAL SHARE FUNDS
0000000000000000  AVAILABLE TO ALLOCATE
```

```
-----------------------------------------------------
:          **FY84-FY92 ESTIMATE OF EXPENSES**       :
-----------------------------------------------------
:      59400  ADMIN COST, FUND MGMT                 :
:       9900  ADMIN COST, TECH SUPPORT              :
:      33750  ADMIN COST, INTERIOR PROJECTS         :
:      84150  PROJECT COSTS, SOAP                   :
:      23400  R&D PROJECTS                          :
:      90000  PROJ. COSTS: EMERGENCIES, NON-EMERGENCIES :
:     ------                                        :
:     300600  TOTAL ADJUSTMENTS TO FEDERAL SHARE ($000) :
```

NOTE: (1) FEDERAL STATES LISTING SHOWS ZERO STATE DOLLARS AND ALL ANTICIPATED RECEIPTS (100%) UNDER THE "50% OF ANTIC RECEIPTS" COLUMN TO ADD TO FEDERAL SHARE POT.

(2) ANTICIPATED REVENUES FOR FY84-FY92 ARE BASED ON THE "DOE" COAL PRODUCTION FORECASTS DATED 9/83.

JAN 10 1984

(APPROPRIATED) - continued

STATE NAME	FIRST DISTRIB	DISTR - PREV EXP. = NET	IF NET <1000 GIVE 1000	GIVE NET IF NET GT 1000	NET TIMES Difference	INV PRI/2 STD. DATA (000)	****FED EXPENSES THROUGH 9/30/83**** RAMP	FEDERAL PROJECTS	COOP. AGMTS.	SOAP GRANTS	TOTAL	INV + PREVIOUS EXPENSES
ALABAMA	26845	18645	0	18645	23686	13800	2000	3700	500	1200	8200	22000
ALASKA	378	78	1000	0	0	10	0	100	200	0	300	310
ARKANSAS	4490	1940	0	1940	2465	1130	2100	200	200	50	2550	3680
COLORADO	2343	-343	1000	0	0	120	0	700	1100	0	1800	1920
ILLINOIS	42707	33807	0	33807	42948	26100	1700	5000	1100	1100	8900	35000
INDIANA	16270	11770	0	11770	14962	8840	900	1300	800	1500	4500	13340
IOWA	16997	9297	0	9297	11811	6230	7300	200	100	100	7700	13930
KANSAS	8493	5243	0	5243	6660	3710	1000	2100	100	50	3250	6960
KENTUCKY	72053	43553	0	43553	55330	30550	6100	16500	1200	4700	28500	59050
MARYLAND	5772	2002	0	2002	2543	960	1500	1700	70	500	3770	4730
MISSOURI	28046	20546	0	20546	26101	15340	2500	5500	300	0	8300	23640
MONTANA	1909	909	1000	0	0	530	200	700	200	0	1100	1630
NEW MEXICO	2819	1619	0	1619	2056	1110	0	700	500	0	1200	2310
N. DAKOTA	3430	2230	0	2230	2833	1250	900	1600	700	0	3200	4450
OHIO	119263	100763	0	100763	128009	79240	7000	9700	1100	700	18500	97740
OKLAHOMA	19365	14765	0	14765	18757	11270	2700	1000	500	200	4400	15670
PENNSYLVANIA	523017	461917	0	461917	586816	367530	18600	41000	500	1000	61100	428630
TENNESSEE	21549	13149	0	13149	16704	9260	700	6700	300	700	8400	17660
TEXAS	2990	340	1000	0	0	0	1400	1000	50	0	2450	2450
UTAH	732	132	1000	0	0	0	0	100	500	0	600	600
VIRGINIA	20219	9019	0	9019	11457	5370	500	6500	1600	2600	11200	16570
W. VIRGINIA	92630	60430	0	60430	76796	43730	8600	14500	4200	4900	32200	75930
WYOMING	24087	19147	0	19147	24324	14800	2600	1000	1300	60	4960	19760
CROW TRIBE	1245	225	1000	0	0	0	0	0	1020	0	1020	1020
HOPI TRIBE	394	81	1000	0	0	10	0	0	313	0	313	323
NAVAJO TRIBE	1148	667	1000	0	0	460	0	0	481	0	481	941
FED STATES	9400	7270	0	7270	9246	5580	300	1830	0	0	2130	7710
	1071584	848300	8000	837145	1063504	646930	69600	125530	18934	19300	231204	878134

1063504 Diff.

_ WYOMING & PENNSYLVANIA REDUCED FROM INVENTORY REPORT BY 6670 AND 8500 RESPECTIVELY DUE TO DATA ERRORS

POTENTIAL FEDERAL PROGRAM STATES

STATE NAME	100% OF ALL AMTIC RECPTS FOR FY84-92 (000)	PREVIOUS STATE BAL (000)	= TOTAL BAL (000)	INV PRI/2 STD. DATA (000)	****FED EXPENSES THROUGH 9/30/83**** RAMP	FEDERAL PROJECTS	COOP. AGMTS.	SOAP GRANTS	TOTAL	INV + PREVIOUS EXPENSES
ARIZONA	38990	0	38990	0	0	500	0	0	500	500
CALIFORNIA	0	0	0	10	0	1000	0	0	1000	1010
GEORGIA	945	30	975	370	0	40	0	0	40	410
IDAHO	0	0	0	10	0	0	0	0	0	10
MASS.	0	0	0	10	0	0	0	0	0	10
MICHIGAN *	0	0	0	5000	0	70	0	0	70	5070
NEVADA	0	0	0	0	0	0	0	0	0	0
N. CAROLINA	0	0	0	10	0	0	0	0	0	10
RHODE IS.	0	0	0	0	0	20	0	0	20	20
SOUTH DAKOTA	0	0	0	0	300	0	0	0	300	300
WASHINGTON	14945	4000	18945	170	0	200	0	0	200	370
ZUNI TRIBE	0	0	0	0	0	0	0	0	0	0
NATL TOTALS	54880	4030	58910	5580	300	1830	0	0	2130	7710

NOTE: MICHIGAN INVENTORY * REDUCED FROM \$43.4M TO \$5M DUE TO DATA ERRORS

COMMENT: If the Rural Abandoned Mine Program (RAMP) is phased out, monies otherwise set aside for RAMP should be returned to those States/ Tribes that generated the monies.

RESPONSE: The comment is founded on a misperception. RAMP funds come from the Secretarial-share of the AML Fund. These monies have no geographic association. No RAMP funds are set aside for specific States.OSM believes that now that the state grant mechanism is functional, the Department of Agriculture - administered RAMP program should be phased out. The fiscal year 1984 Congressional budget language restores RAMP to the way it had been administered prior to fiscal year 1983. That is, the Soil Conservation Service will administer RAMP. Therefore, consistent with OSM's apportionment approach, fiscal year 1984 Secretarial-share monies used, through RAMP, to address problems within a State/Tribe will count against that State's/Tribe's Secretarial-share apportionment.

ENVIRONMENTAL POLICY INSTITUTE

COMMENTS OF THE ENVIRONMENTAL POLICY INSTITUTE
STATUS OF THE TENNESSEE SURFACE MINING PROGRAM

January 31, 1984

The following comments on the status of the administration of the Tennessee surface mining program are submitted in accordance with the Federal Register Notice of December 21, 1983. 48 Fed. Reg. 56403 (1983).

The Environmental Policy Institute and its lobby arm, the Environmental Policy Center, have been involved in the effort to assure the implementation and enforcement of sound mining and reclamation laws since 1972. EPC was one of the leaders in the movement to enact a comprehensive federal strip mining law. The early proposals for strip mining legislation would have established a program that was administered entirely by the federal government. EPC supported modifications to those proposals that allowed the States to assume primary responsibility for mining regulation, while a maintaining a strict federal oversight role. The Act that was finally signed into law in 1977 incorporated these modifications.

EPI continues to support the concept of state primacy. That concept, however, is now put to a most difficult test. In the 1983 Annual Evaluation of the Tennessee Program prepared by OSM, major problems were identified in each major area of regulatory responsibility. These included:

- permitting, and the failure of the State to approve permit applications that meet the requirements of the law;
- enforcement, and the failure of the State to enforce against observed violations of the law;
- inspections, and the failure of the State to conduct monthly inspections of each mine site as required by law;
- civil penalties, and the failure of the State to assess penalties against operators even where such assessments are mandatory under the law;
- bonding, and the failure of the State to assure that bonds are posted in an amount sufficient to assure reclamation as required by the law; and finally,
- bond release, and the failure of the State to assure that full reclamation has been achieved prior to the final bond release.

In our view, these problems are so pervasive that OSM has no choice but to take decisive action. If the State is unable or unwilling to correct these problems in a timely fashion, under a strict schedule, then OSM must be prepared to assume the responsiility for the regulation of mining in the State of Tennessee. In particular we believe that OSM should take the following action:

- o Establish a strict schedule affording the State a reasonable time to correct all defects that have been identified. OSM should make clear to the State that it will not approve extensions to that schedule except in the most compelling circumstances.

- o Require the State to prepare monthly summaries of its efforts to correct past abuses and as well as its current efforts to administer the program as required by law. The summary of the State's efforts to coreect past abuses should be made available to the public promptly and should include statistics and other documentation setting forth the corrective action that was taken with respect to: (1) improperly issued permits; (2) unenforced violations; (3) unassessed penalties; (4) partial and complete inspections; (5) improperly issued bonds; and (6) improperly released bonds. The current summaries should include data regarding actions on new permits, inspection and enforcement data and information on bond amounts and bond releases.

- o Increase federal oversight inspections and federal review of permitting and bonding actions. OSM should substantially increase its oversight activities in Tennessee to be better able to monitor continuing problems that the State is having and to assist the State in correcting those problems. OSM should prepare monthly summaries of its oversight activities in Tennessee to provide the citizens with the information they need to monitor the State's performance.

- o OSM should exercise its authority under Section 705(b) of the Act to provide the State with the assistance it may need to correct the current problems that it is having with the administration of it program.

The summaries of the State and OSM activities are particularly important to citizens because they will have no other way of assessing the improvements that the State may be making in implementing its responsibilities. Thus, we urge OSM to require these summaries or explain in detail why such summaries are unnecessary.

The integrity of the State primacy concept is at stake in these proceedings. Unless OSM demostrates that it can fulfill its oversight responsibilities either by assuring that the State corrects its past problems, or in the alternative, by assuming responsibility for regulating mining in Tennessee, then the entire basis for the federal law will have been undermined. We will watch OSM closely in the days ahead to assure that the regulation of mining in Tennessee meets the standards of the federal law.

In closing, we ask that OSM provide the public with an additional opportunity to comment on the progress that has been made by the State in administering the Tennessee program. This opportunity to comment should be provided afetr the public has had an opportunity to review the lengthy testimony and documentation supplied by the State at the hearing in Knoxville on January 26, 1984.

Respectfully submitted,

Mark Squillace

Mark Squillace
Director, Litigation Project
Environmental Policy Institute

37-026 436

ENVIRONMENTAL POLICY INSTITUTE

OSM ANNUAL STATE PROGRAM EVALUATION REPORTS 1983
SELECTED ISSUES REVIEW FOR APPLACHIAN STATES 4/84

ISSUES	AL*	KY	MD*	PA	TN	VA	WV
INSPECT. UNITS	769	7023	128	4426	865	1050	3490
# NOV'S	119	1064	148	508	527	23	1805
# CO'S	9	297	8	96	88	27	162
# CIT. COMPLAINTS	48	97	10	369	13	254	177
# 10 DAY NOTICES	71	74	21	41	103	95	125
SELECTED DEFICIENCIES**							
Inspection------							
1.	X	X	X	X	X	X	X
2.		X		X	X		
3.					X	X	
4.				X	X		
5.	X	X		X	X		
Enforcement------							
6.		X	X	X	X	X	
7.	X						
8.	X			X	X		
9.					X		
10.							X
11.				X		X	
Penalty Assessm.------							
12.				X	X		
13.				X	X	X	
Permit Approval------							
14.					X	X	X
15.						X	
16.		X				X	X
17.					X	X	
18.						X	X
19.						X	X
20.	X			X	X		
21.		X		X	X		X
22.						X	
Bonding------							
23.		X			X		
24.					X		
25.					X		

* - In our view the OSM evaluation lacked depth and thoroughness
** - See code on following page for specific deficiencies (note that degree of deficiencies [serious/minor] vary in each state)

218 D Street, S.E., Washington, D.C. 20003 (202) 544-2600

DEFICIENCIES CODE

(as noted in some degree in OSM's evaluation reports)

INSPECTION

1. Failure to meet required inspection frequency
2. Incomplete and/or inadequate inspections
3. Inadequate response to 10 day notices
4. Inadequate response to citzen complaints
5. Insuffient staffing and/or staff training

ENFORCEMENT

6. Failure to cite observed violations
7. Failure to cite violations in a timely manner
8. Failure to follow-up violations in a timely manner
9. Improper vacation of NOV's and CO's
10. Failure to establish abatement periods
11. Improper extension of 90 day abatement periods

CIVIL PENALTY ASSESSMENT

12. Failed to assess civil penalties
13. Improper assessment of civil penalties

PERMIT APPROVAL

14. Approved deficient permit and/or improperly approved permits
15. Approved improper permit variances
16. Improperly waived required permit technical analysis
17. Failed to make written findings regarding permit approval
18. Inadequate written findings regarding permit approval
19. Inadequate technical standards for permits
20. Insuffient permitting data
21. Insuffient cumulative hydrologic impact data
22. Improper general decisions regarding mining actions and proposals (i.e., two acre exemption, sed. pond design, haul road deeding, etc.)

BONDING

23. Inadequate criteria for bond release
24. Improper bond release
25. Insufficient bonding levels

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

May 2, 1984

Mr. Roger Sindelar
Senate Subcommittee on
Energy and Mineral Resources
316 DSOB
U.S. Senate
Washington, D.C. 20510

Dear Mr. Sindelar:

Enclosed are copies of a statement we are submitting for inclusion in the hearing record of April 18, 1984 regarding "The Implementation of the Surface Mining Control and Reclamation Act of 1977 in the Appalachian Coal Region." We appreciate the opportunity afforded by Senator Warner to express our thoughts on this important subject, and to have our statement incorporated into the hearing record.

Sincerely,

David Alberswerth
Resource Specialist
Public Lands/Energy Division

enclosure

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

Testimony Submitted for the Record
to the
Senate Subcommittee on Energy and Mineral Resources
of the Committee on Energy and Natural Resources
on the subject of

Implementation of the Surface Mining Act

by
David Alberswerth
Legislative Representative

May 2, 1984

The National Wildlife Federation appreciates this opportunity to present its views before the Senate Subcommittee on Energy and Mineral Resources on the implementation of the Surface Mining Control and Reclamation Act of 1977. Founded in 1936, the National Wildlife Federation is the nation's largest conservation/education organization, with over four million members and supporters and 51 affiliate organizations. The Federation has long recognized the need to protect our nation's renewable resources, its prime farmland, its alluvial valley floors, its wildlife habitat, and its streams from the damaging effects of coal strip mining.

HISTORY OF THE PROGRAM

Passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) was a landmark in the efforts of Americans to control the devastating effects of the strip mining of coal. Prior to passage of SMCRA, there were many who felt that the practice should be banned outright. In fact, some locales had actually outlawed the practice, and several others were contemplating it. Additionally, an "abolition" movement existed in Congress, comprised of members who wished to see strip mining outlawed nationwide. A bill which outlawed strip mining on western split-estate lands was actually passed by the Senate.

Congress' eventual response to the issue, of course, was enactment of SMCRA. The Act represented a compromise between those who wanted to see strip mining outlawed and those who opposed federal regulations altogether. The Act legitimatized strip mining as a means of extracting coal in exchange for the imposition of ostensibly stringent environmental controls on the inevitible degradation which accompanies the practice of strip mining. In reviewing the success of this compromise, it is clear that the first goal of the Act has been achieved. Strip mining is now the extraction method of choice for 60% of the industry. It has not been banned anywhere, and it thrives wherever coal is mined, from Appalachia through the Midwest, to the Rocky Mountain states and the Pacific Northwest. It's virtues are regularly extolled by operators who point to its economic benefits and its contribution to our "national security."

Unfortunately, the second promise of the Act--that the environmental degradation of strip mining be stringently controlled, and mined land be returned to a condition which is at least as productive as that which preceded mining--has not been fulfilled. Over the past three years this Administration has singled out the Office of Surface Mining as an example of an illegitimate federal regulatory program, and an "excessive, burdensome, and counterproductive" effort.

ILLEGAL RULES CHANGES

The Administration has sought to systematically and illegally destroy the Act's effectiveness through a comprehensive program of radical rule revisions. These regulatory changes have undercut virtually every significant environmental protection afforded by the statute, including requirements for revegetation, prime farmland protection, toxic waste disposal.

The Interior Department's changes in the Office of Surface Mining's permanent program regulations are so extensive it would be all but impossible to catalogue them here. A few examples will provide the Committee with a sense of the breadth and extreme nature of those alterations. In its rule rewrite, the Interior Department:

- repealed the ban on the use of unapproved persistent pesticides at mine sites;
- repealed the requirement that coal miners place fences around or cover toxic waste ponds;
- weakened various requirements that assure that land is returned to its approximate original contour after mining:
- broadened the right of miners to strip mine coal on privately owned inholdings within National Parks and other protected areas;
- dramatically lifted federal control over strip mining on federal lands;
- lifted the protections afforded state listed threatened or endangered species;
- weakened the provisions of law that are aimed at assuring that when prime farmland is mined, it is restored after mining;
- repealed the requirement that coal miners restore or compensate owners for structures damaged by mine subsidence;
- weakened the standards for protecting alluvial valley floors that are so critically important for western agriculture and ranching; and
- considerably weakened the bonding requirements that assure the government will be able to reclaim mine sites if individual companies are unwilling or unable to do so.

Consequently, the National Wildlife Federation and other national and regional citizens organizations have been forced to initiate nine of lawsuits in order to bring OSM's regulatory program back into compliance with the law.

OSM OVERSIGHT

One aspect of OSM's administration of the law which received scant public attention, but which perhaps best illustrates OSM's determination to ignore its clear statutory mandate, is the agency's "oversight" of state regulatory programs. The Act is unequivocal about the Secretary's nondiscretionary oversight duties:

a. He "shall...make those investigations and inspections necessary to insure compliance with" SMCRA (SMCRA section 201(c));

b. He "shall cause to be made such inspections...as are necessary to evaluate the administration of approved state programs...." (SMCRA section 517(a));

c. He "shall notify the state regulatory authority" if "on the basis of any information available to him...[he] has reason to believe that any person is in violation of any requirement of [SMCRA]...or any permit required by [SMCRA]...(SMCRA section 521(a)(1));

d. He "shall immediately order federal inspection" of a mine for which he has issued a Ten Day Notice if "the State regulatory authority fails within ten days after notification to take appropriate action to cause said violations to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary...." (SMCRA section 521(a)(2));

e. He "shall immediately order a cessation of surface coal mining and reclamation operations..." where on the basis of any federal inspection, he, "determines that any...condition, practice or violation...creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm...." (SMCRA section 521(a)(2)); and

f. He "shall prepare and...promulgate and implement a Federal program...if such state...fails to implement, enforce, or maintain its approved state program..." (SMCRA section 504(a)(3)).

Unfortunately, in a number of critical areas, OSM has fallen far short of meeting these oversight responsibilities.

TEN DAY NOTICES

OSM has regularly failed to issue required ten-day notices. For example, according to OSM's June, 1983 Annual Report for Missouri:

> OSM identified...120 apparent violations or conditions causing violations where the state failed to take appropriate enforcement actions...[T]he State is not taking enforcement action when NPDES monitoring reports indicate noncompliance with effluent standards. (Annual Report, Missouri Permanent Program", OSM, June, 1983, p.13)

However, OSM issued only three ten-day notices in Missouri from April, 1982 to July, 1983. In another case, OSM noted that in Arkansas, the agency found "an inordinate number of serious sometimes long-standing violations...which should have been cited previously" by the State. (Harris letter to Governor Clinton, March 11, 1983). However, OSM sent only one ten day notice from April, 1982 to the end of that year. According to OSM's Annual Report for the state of Kentucky, though the agency received 67 oral citizens complaints between July 1, 1982 through February 28, 1983, no ten-day notices were issued by OSM for any of them. (p. 1-26, 1983, Kentucky Annual Report). A final example is Utah, where a March 11, 1983 letter from the OSM Director to the Governor stated that:

> While OSM has found shortcomings in field inspection activity, these proglems have been overshadowed by instances of Utah's failure to follow through with enforcement actions for violations found in the field. Problems involve timeliness of abatement, non-issuance of cessation orders and failure to establish patterns of violations at mines where the same kinds of violations repeatedly occur...." (Letter from Harris to Matheson, March 11, 1983, p.2)

Despite the apparent knowledge by OSM that Utah was not taking proper enforcement actions, that cessation orders were not being issued, and that repeated violations of the law were occuring at some Utah mines, OSM issued only one ten-day notice, and no notices of violation (NOVs) or cessation orders (COs) in Utah between October 1, 1982 and September 30, 1983.

What the above examples show is that OSM has clearly abdicated its responsibility to enforce SMCRA when the states fail to do so.

INSPECTION AND ENFORCEMENT

Another area of marked failure in OSM stewardship of the strip mining program pertains to inspection and enforcement.

Table I illustrates the margins by which 13 major coal mining states are missing the number of required "complete" and "partial" inspections required per year. Under section 517(c) of SMCRA, each operation must receive at least 4 complete and 8 partial inspections per year. The information in Table I is derived from OSM's 1983 annual reports for each state. It is clear that many states whose programs OSM has conditionally or fully approved are not living up to their responsibilities to regularly inspect strip mining operations. In only three states has OSM taken decisive action under 30 CFR 733 to bring the states' programs into compliance with the Act--Tennessee, Kansas, and Oklahoma.

Widespread failure to meet the required number of inspections is only part of the problem, however. The fact that some states come close, achieve, or exceed the number of inspections required does not mean that those states have effective enforcement programs. For example, though Indiana approximates the number of partial inspections required, OSM notes that:

> A review of Indiana's inspection reports reveals that in most instances Indiana has not adequately documented site conditions...
>
> It is clear that all violations are not being cited when they are initially observed by the State. The violations most ignored are related to erosion control, water quality, and topsoil handling....

TABLE I

STATE	REPORTING PERIOD	PERCENT INSPECTIONS COMPLETED	
		(Complete)	(Partial)
Alabama	5/20/82-5/20/83	NA	50%
Arkansas	4/1/82-5/31/83	62%	39%
Colorado	4/1/82-3/31/83	73%	91%
Illinois	6/1/82-7/31/83	NA	34%
Indiana	7/1/82-6/30/83	NA	96%
Kentucky	5/18/82-4/30/83	75%	93%
Maryland	4/1/82-4/30/83	95%	NA
Missouri	4/1/82-3/31/83	31%	25%
Ohio	8/16/82-6/30/83	84%	49%
Oklahoma	4/1/82-4/30/83	43%	73%
Pennsylvania	7/31/82-6/30/83	47%	NA
Tennessee	8/10/82-6/30/83	39%	13%
Virginia	4/1/82-5/31/83	38%	NA

(Indiana Annual Report, OSM, 1983, pp. 30, 31-32.

Lax enforcement is also evident in Colorado, a state which has also failed to inspect mines frequently enough to meet the requirements of the law:

> In a number of cases, rather than citing an observed violation, the inspector would note the violation in his/her report, and tell the operator to correct the violation by a certain date. Such informal abatement dates were sometimes extended when the operator failed to correct the violation within the time allotted....
>
> ...Instead of issuing NOVs on site, inspectors frequently issued notices the following week..., but in some cases this took as long as three weeks....

(Colorado Annual Report, OSM, 1983, p.23)

North Dakota is an example of a state which vigorously complies with the inspection frequency requirement, exceeding by far the number of partial and complete inspections required. However, although 959 inspections were performed by the state between May 1, 1982 and May 31, 1983, only 5 notices of violation were issued. According to OSM's annual report for North Dakota:

> ...State inspectors seemingly noted violations in their reports but did not take necessary enforcement actions. In discussions with OSM, North Dakota indicated that the problems described in inspection reports for which no enforcment action had been taken did not, in fact, constitute violations. The State advised OSM that inspection reports were utilized as warnings to the operators to alert them to situations that had the potential for becoming violations....

(North Dakota Annual Report, OSM, 1983, pp. 18-19).

New Mexico is another state whose records show that the required number of inspections are performed. However, OSM notes that this information from the state is probably deceiving, since a sampling of 43 state inspection reports indicated that the average inspection time for a complete inspection was 1 1/2 hours, where for OSM inspectors the average complete inspection in the state took 6 1/2 hours. (New Mexico Annual Report, OSM, 1983, p.31)

Furthermore, according to OSM:

> In reviewing the OSM oversight inspections that closely followed State quarterly inspections it was found that OSM uncovered violations that State inspectors apparently missed....

(*Ibid*.)

Nevertheless, OSM issued only two (2) ten-day notices and one (1) NOV in New Mexico between October 1, 1982 and September 30, 1983. It is important to note that at issue here are not "minor" violations, or the failure by the state and OSM to notice "housekeeping" or other "bean counting" type violations. A review of violations noted on New Mexico inspection reports but not cited included: effluent violations, failure to control erosion on reclaimed areas, failure to protect topsoil, and failure to prevent water pollution. ("Still Stripping the Law on Coal", Natural Resources Defense Council, 1984, p.47).

A final example of failed inspection and enforcement is Pennsylvania. Pennsylvania not only fails to meet the required number of inspections by a wide margin (see Table I), but fails regularly to take "appropriate action" when violations occur. According to OSM:

> ...the manner in which it [Pennsylvania] cites violations is not appropriate enforcement under provisions of the approved program....
>
> [Pennsylvania] has not cited all observed violations in accordance with the program as interpreted and approved by the Secretary....
>
> [Pennsylvania] inspectors do not immediately issue Abatement Orders (NOVs) upon detection of a major violation....
>
> ...the average time from discovery of the violation(s) to issue of the Abatement Order was found to be 36 days...[T]he actual time for abatement, from discovery of the violation to the time provided for abatement, was extended to an average of 64 days....
>
> Failure-to-abate Cessation Orders were not promptly issued where reinspection indicated noncompliance after abatement time had elapsed. In 12 Abatement Orders reviewed indicating noncompliance, all 12 had no indication of Cessation Order issuance after a period of from 5 weeks to 3 months....

(Pennsylvania Annual Report, OSM, 1983, pp. 21-23).

Given this glaring record of enforcement failure by Pennsylvania, one might expect OSM to step in and fill the void. Unfortunately, nothing of the sort has happened. Between October 1, 1982 and September 30, 1983, OSM issued only 3 NOVs and no COs in Pennsylvania, despite clear indications from its own evaluation of the state's performance that Pennsylvania's actions were severely deficient.

The examples cited above are not isolated incidents, but are simply used here to illustrate the pervasive failure by OSM to assure that the states live up to their responsibilities.

PERMIT APPROVAL

One last area of severe programmatic deficiency in the strip mining program is issuance of mining permits. Table II was obtained from OSM. It graphically illustrates the status of permitting programs for 13 states. It is apparent from the chart that most of these states have numerous permitting problems. In only two of the states listed (Kansas and Oklahoma) has OSM responded to program deficiencies with "733" letters. If one reviews OSM's annual reports for all states which have received primacy from the agency, it becomes evident that serious problems exist in the permitting programs of many of them. For example, in Utah OSM found that:

> In reviewing the permitting, inspection, and enforcement functions, we found major problems, especially with permitting and enforcement. For example, two years after receiving primacy, only a few of the mines that were in operation at that time have been permitted under the permanent regulatory program. There is a need to issue permanent program permits because of the administrative and technical deficiencies identified in the interim program permits which governed the mines at the time Utah was given primacy. However, rather than process permanent program permits, [Utah] devoted its resources to modifying interim permits in order to keep mines operating when faced with operational changes to meet environmental protection requirements. Thus, [Utah's] repermitting effort has been unable to accomplish one of the essential purposes of Utah's approved regulatory

Table II

MINE PLAN PERMIT APPLICATION DEFICIENCIES IDENTIFIED DURING 1st ANNUAL OVERSIGHT

	PERMIT TOPIC AREAS															
OSM/SRA	BONDING	ADMINISTRATIVE AND PROCEDURAL	INCOMPLETE PERMIT APPLICATIONS	FISH AND WILDLIFE	VEGETATION AND REVEGETATION	HYDROLOGY	OVERBURDEN ANALYSIS TOXIC SPOIL	WRITTEN FINDINGS	REPERMITTING	GEOLOGY BACKFILL GRADING AOC	SOIL RESOURCES	INTERAGENCY COORDINATION	SEDIMENT PONDS/ ROADS IMPOUNDMENTS	BLASTING EXPLOSIVES	EXPERIMENTAL PRACTICE	CULTURAL RESOURCES
TULSA FIELD OFFICE																
OKLAHOMA	●	●	●	●	●	●	●	●	●	●						
TEXAS		●		●	●		●				●					
LOUISIANA	●	●									●					
ARKANSAS	●	●	●	●	●	●	●	●		●						
KANSAS CITY FIELD OFFICE																
MISSOURI	●	●		●	●	●							●			
KANSAS	●	●	●	●	●	●				●	●	●	●		●	
IOWA	●	●	●	●	●	●		●		●		●	●	●		
CASPER FIELD OFFICE																
MONTANA	●	●	●						●							
N DAKOTA		●		●	●	●	●	●	●	●			●			
WYOMING	●				●				●				●			
ALBUQUERQUE FIELD OFFICE																
COLORADO	●			●	●	●	●		●	●	●					
UTAH	●	●							●		●					
NEW MEXICO	●			●	●	●	●		●	●			●	●		●
STATE TOTALS	11 OF 13	10 OF 13	5 OF 13	9 OF 13	10 OF 13	8 OF 13	6 OF 13	4 OF 13	7 OF 13	7 OF 13	5 OF 13	2 OF 13	6 OF 13	2 OF 13	1 OF 13	1 OF 13

> program: to bring operators under the permanent program.

(Harris letter to Matheson, March 11, 1983).

OSM's 1983 annual report for Utah reiterated this problem:

> A review of recent permitting actions shows that modification and revision practices continue to be handled much as they have been in the past. An excessive amount of time is spent on changing interim permits and stated procedures are not being followed....
>
> Presently, the approval may be granted by the staff member working on the review and sometimes by telephone with little documentation in the permit file....

(Utah Annual Report, OSM, 1983, p.19).

In Indiana, OSM found that:

> ...the State has issued permits which omitted necessary information required by the Indiana program....
>
> ...all permit files reviewed [by OSM] contained specific requiements for additional information that had not been addressed by the applicants at the time of permit approval by [Indiana].

(Indiana Annual Report, OSM, 1983, p.16).

The omitted information referred to above related to protection of prime farmlands, hydrology, lack of water treatement provisions, and blasting information. In other words, the omissions were related to areas of serious environmental or safety concerns.

In Alabama, OSM's annual report stated that:

> [Alabama] does prepare written findings for all permits issued under the approved permanent program. However, the findings document consists of two pre-printed pages

> with no level of detail or explanation concerning the individual permit applications. In addition, [Alabama] did not possess sufficient technical data or information to justify approval of the five permitted mine plans reviewed by [OSM]....

(Alabama Annual Report, OSM, 1983, p.10).

In addition, OSM found what it described as "several recurring issues and deficiencies relative to Alabama's permitting process" which pertained to fish and wildlife protection, revegetation, and hydrology. (*Ibid*., pp. 10-11).

In a final example, OSM found in North Dakota that 28 months after primacy was granted, seven of thirteen permanent program applications were operating under "administrative delay", a legal device used by North Dakota and other states which enables a permittee to continue operations under interim permits if he has filed a complete application under the permanent program. In addition, of the two permit applicatons evaluated by OSM, OSM found that the state had failed to properly address the following areas in either or both of the applications: fish and wildlife protection, prime farmlands, and hydrology. OSM also found that, although North Dakota's program requires written findings in six areas, in the two applications reviewed by OSM "none of the statutorily required findings were substantiated, only reiterated." These findings included: areas where strip mining is either prohibited or limited, alluvial valley floors, impacts of mining on water quality and quantity, prime farmland protection, protection of threatened and endangered species, and reclamation fee payment. And finally, the state failed to make the following required determinations: whether the applicant is in violation of any environmental laws, whether a pattern of willful violations has been established, and whether there are adverse effects on sites listed in the National Register of Historic Places. (North Dakota Annual Report, OSM, 1983, pp. 14-15).

CONCLUSION

These examples, drawn from OSM's own evaluation of the performance of state regulatory programs which indicate that many, if not most, states are not living up to their responsibilities under SMCRA. The states generally do not inspect mines with sufficient frequency to ensure that operators are complying with the law. Often when inspections do occur, enforcement is lax, or non-existent. Permits are issued with insufficient information or assurances that critical environmental issues will be properly addressed. Yet, despite the documentation from OSM's own field offices, OSM is, for the most part, disinclined to take the necessary actions required by law to bring these states into compliance.

The result is that the compromise struck when SMCRA was passed has been broken. Although the coal industry has been assured of its right to strip mine, the adequate protection of the environment remains an unkept promise.

Save Our
Cumberland
Mountains

P.O. Box 457 • Jacksboro, TN 37757 • (615)562-6247

April 20, 1984

To the Sub-Committee on
Energy and Mineral Resources:

These comments are made on behalf of Save Our Cumberland Mountains, SOCM, a citizens organization in Tennessee that has spent a great deal of effort over twelve years to push for effective control of stripmining. We have members living in almost every county of the East Tennessee coalfields. Our members have to live with stripmining, and with whether or not stripmining is properly controlled.

We were unable to send a representative to the hearing of the Subcommittee on Energy and Mineral Resources on April 18, 1984 in Abingdon, Virginia, but we wish these comments to be entered in the record of that hearing.

First of all, it is clear that stripmining laws and regulations have not yet been properly enforced in Tennessee since the State of Tennessee received primacy from the Secretary of the Department of Interior in August of 1982. The U.S. Office of Surface Mining has made this finding, and has just announced that OSM will be taking back the inspection and enforcement responsibility from the Tennessee Division of Surface Mining. We at SOCM are pleased with OSM's decision, as the Tennessee Division of Surface Mining has never fulfilled its inspection and enforcement responsibilities to citizens of Tennessee coalfields. The OSM found in Tennessee that the inspection frequency was not met, that violations were sometimes not being written up, that penalties were often not assessed for serious violations, and that Tennessee inspectors were not being sufficiently supervised to assure consistency in enforcement. These are a few of the serious problems in Tennessee that had never been resolved.

To make the confusion worse here in Tennessee, the Tennessee Department of Health and Environment, the coal industry, and many Tennessee legislators are pushing a bill through the Tennessee Legislature which, if passed as is, greatly weakens the Tennessee Surface Mining Law of 1980, and, in fact, in some sections, would most likely fail to meet minimum standards of the U.S.Surface Mining Control and Reclamation Act of 1977. This bill, if passed, will only result in further confusion in Tennessee. This bill will not solve the coal industry's problems of lack of a market for the coal, a factor which has greatly decreased mining in Tennessee and other states. What this bill will do is hurt Tennessee coalfield residents, who have even yet not seen the 1980 Tennessee Surface Mining Law enforced.

All of this is to say that the U.S. SMCRA of 1977 has yet to be enforced in Tennessee. What we have been living through is some gradual improvement by the Tennessee Division of Surface Mining because, and only because, of OSM's oversight. However, historically, enforcement in Tennessee has been so poor that the improvements have not been enough to bring Tennessee into compliance with their OSM approved program, and so now, the OSM will be taking on the Inspection and Enforcement program until Tennessee shows that they can fulfill their obligations in this area. It is our hope that OSM takes seriously this responsibility that they have taken on, and that they move quickly to ensure proper mining in Tennessee. If the Tennessee General Assembly does decide to give OSM back the entire program, as has been suggested by Tennessee Governor Lamar Alexander, then we hope OSM can quickly, and in an orderly fashion, gear up to enforce all provisions of the stripmining laws and regulations.

We wish to state again that any improvements in enforcement made in Tennessee have resulted directly from OSM's oversight, and we are glad that this oversight is in place.

Now I wish to address the recent National Academy of Sciences report concerning highwall elimination and approximate original contour requirements of SMCRA. This report suggests that an important provision of SMCRA be relaxed, that of requiring highwalls be backfilled and taken back to approximate original coutour. SOCM wishes to state strongly that this debate has already been covered during the long years of debate on SMCRA, and that SMCRA should not be opened to amendments as a result of this report.

This report suggest two arguments for relaxing this standard. One is that returning steep slopes to AOC may result in unstable conditions and landslides. The Act specifically addresses this issue, with a provision that if a qualified engineer cannot guarantee slope stability on a steep slope, then the slope should not be mined. Secondly, this report suggests that leaving part of a highwall with a flat bench would be useful for post-mining land uses such as housing or farming. Anyone who knows mining in Tennessee can tell you that wonderful proposed post-mining land uses planned for mined areas in the past seldom occured, and that operators were far more likely to use this loophole to avoid requirements of backfilling. In addition, a great majority of mines in Tennessee are in fairly inaccessible areas that are useless for post-mining development. It is also questionable as to the feasibility or wisdom of building on mined sites, especially due to subsidence problems. Changing the requirement for highwall elimination/AOC would only create a loophole that could cause extensive harm.

The National Academy of Sciences report makes no new findings on what is an old debate, a debate that was decided with the passage of SMCRA. SMCRA should not be opened until it has been enforced for enough time to clearly document its effects. Since SMCRA has not yet been enforced in Tennessee, as evidenced by OSM's takeover of inspection and enforcement, then we feel it would not be at all helpful now to open the Surface Mining Reclamation and Enforcement Act of 1977.

Thank you for this opportunity to comment.

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UNDERSTANDING AND CONTROLLING MINE SUBSIDENCE OVER A LONGWALL PANEL

by

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and

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Presented at the 1982 American Mining Congress Coal Convention, St. Louis, Missouri, May 9-12.

ABSTRACT

Longwall subsidence experience has been gained by Jones and Laughlin Steel Corporation at their Vest No. 5 Mine in Washington County, Pennsylvania. A private residence located at mid-panel, length-wise and width-wise, was undermined by a longwall unit operating in the Pittsburgh coal seam. The surface, approximately 400 feet above the seam, was closely monitored for subsidence effects.

This paper presents action taken in an attempt to minimize subsidence damage to the dwelling. It also presents the results from biweekly survey-grid monitoring. Subsidence development curves, subsidence contour maps, differential settlement data, and pictures reflecting the extent of damage to the surface structure are presented in an analysis of the situation.

INTRODUCTION

The present longwall panel at the Vest No. 5 Mine located in Southwestern Pennsylvania was begun in June 1981. A private residence was located at mid-length and mid-width of the panel, and management decided to negotiate with the home owner for the purpose of mining beneath his home. The mine operates in the Pittsburgh coal seam which averages 65" in thickness at that location. Panel width at the house was 432 feet. The house lay over some 400 feet of overburden, and management was justifiably hopeful that little subsidence damage would occur to it. An agreement was effected which ensured the home owner that any damage to his house caused by subsidence due to longwall mining would be repaired in return for the right to mine under his house 100%.

SET-UP OF SURVEY GRID AND PRE-MINING INSPECTION

The front of the house which was undermined is located 1735 feet into the panel. A survey grid with monitoring points on 100-foot to 130-foot centers was established completely around the house as shown in Figure 1. The grid extended 370 feet in front of the house, 350 feet behind it, 320 feet to the tailgate side of it, and 340 feet to the maingate side of it. The direction of mining was at a 55 degree angle to the house which resulted ina total mining distance of 65 feet directly underneath it.

The survey grid was monitored on a weekly basis until movement was detected in the first station affected. After subsidence began in the grid, it was monitored on Tuesday and Thursday of each week. Additional monitoring stations were established on the house outside and on beams in the basement in order to get an accurate account of movement in the structure itself.

A pre-mining inspection was made throughout the house. Pictures were taken to verify existing conditions, and a drawing was made of each room for future use. A general floor plan was drawn up, and an external inspection of the premises was also made.

RESULTS OF GRID MONITORING PRIOR TO INTERCEPTION OF THE HOUSE

Grid point number 5 was used to monitor subsidence movement far in advance of undermining the house. It is located 360 feet in advance of the front of the dwelling. Figure 2 depicts the subsidence development curve at this point, and Table I gives the data for it. Analysis of this data indicated that initial movement of the ground occurred when the longwall face was 50 feet past grid point number 5. The initial movement was in the form of a slight heaving (+0.05 feet). At a distance of 148 feet past point 5, the first substantial subsidence "drop" occurred (-0.63 feet). This was an initial break, and an additional 60 feet of mining was required before a second break occurred. From the instant of the second break, movement then remained fairly constant until the face was 303 feet past point 5. At this point 2.92 feet of subsidence was realized on the surface with an underground mining height of 74 inches. A period of creep was then seen to last for almost a month (271 feet of mining). Maximum subsidence which occurred at point 5 was 3.17 feet or 51.4% of the mining height. Total creep amounted to 8.2% of maximum subsidence.

Reference was made to a core drilling record for the hole drilled nearest monitor point 5. The log showed 33 feet of sandstone at a depth of 104-137 feet, 16 feet and 11 feet of limestone separated by 13 feet of gray shale at a depth of 266-307 feet, and 18 feet of limestone and 22 feet of sandstone separated by 5 feet of shale at a depth of 315-359 feet. The strength of these strata may be the key to the "double break" condition realized.

It is interesting to note that the house lost its underground water well when the longwall face was 300 feet in front of the house. The strata above the panel dipped opposite to the direction of mining and away from the house; therefore, a substantial break of the strata resulted in the loss of water even though it occurred far from the well. A substitute water source was provided immediately to prevent inconvenience to the home owners.

PREPARATION FOR UNDERMINING OF THE HOUSE

Procedures for preparing the house for subsidence movement were established in the agreement with the home owner. After analysis of the movement at point number 5, it was decided to proceed with excavating a 2-foot wide trench around the house wherever substantial ground covered foundation walls. This was done when the face was 300 feet in front of the house in an attempt to eliminate damage from possible lateral movement. Also, ten screw jacks were taken to the basement of the house for possible use in keeping it level. Additional monitoring points were established at this time in the basement.

ANALYSIS OF SUBSIDENCE AT THE HOUSE

Reference is made to Figure 3 which shows the subsidence development curve for grid point number 7 located 20 feet from the front of the house. Significantly absent is a secondary "break" point after subsidence movement had begun. A fairly uniform rate of movement was realized, unlike the results from monitoring grid point number 5. Table II presents data used to plot this curve. Also interesting to note is a relatively small amount of creep (2.4% of maximum subsidence) at this point. Total subsidence at this location amounted to 3.41 feet or 55.3% of the mining height.

Reference is now made to Figure 4A through 4G which show the sequence of subsidence movement at the house and consequent damage incurred by the structure. Much was learned by concentrating on the amount of differential settlement at the house. As seen in Figure 4A, four inches of subsidence occurred at the front of the house when the longwall face was 70 feet past it. Also, due to the angle of mining with respect to the house, the corner closest to the face dropped very little, setting up a stress condition. At this point, intiial subsidence damage appeared as the basement floor cracked, windows jammed closed, doors would not close, some plaster cracks occurred in the front part of the house, and the fireplace gapped about ½" from the wall. Differential subsidence at this point in time was 0.29 feet (less than 4").

Figure 4B shows that differential subsidence at the house increased to 0.75 feet when the face advanced to 116 feet from the front corner. The back corner, which was closestto the face, still dropped only 0.12 feet. Progressive damage was logged as the basement crack widened to 1", joints between foundation blocks began cracking open, and more plaster cracks occurred in the living room upstairs.

Figure 4C shows the condition when the worst differential subsidence occurred (1.34 feet). The back corner finally started dropping significantly when the face was located 175 feet from the front corner. Damage to the dwelling became quite significant at this point, as severe stress was developed throughout the structure. At this point, the brick facing on the house began cracking substantially but mostly at joints, the back porch cracked, more extensive cracks developed in the living room, and more foundation block joints opened up. One of the doors which would not close previously, now closed properly. The crack in the basement floor pushed together.

Figure 4D shows a differential subsidence of 0.98 feet when the face was at 214 feet away from the front corner of the house. This front corner was approaching maximum subsidence at this point. The back corner was about two-thirds subsided. At this point, chunks of cement broke off corners of the upper garage floor slab, extensive brick damage occurred, the basement foundation wall bowed in, some wooden headers split in the basement, and the garage doors stuck closed. Additionally, the basement floor began sliding slightly toward the road, opposite to the direction of mining. The movement of the structure was down the side of the subsidence trough toward the center. This movement was topographically uphill. Only about 2" of sliding occurred, which was visible on the beams of the house and at the location where the gas line entered the basement.

Figure 4E and 4G show the differential subsidence for the remainder of the period until movement virtually was done. Damage to the house did not increase during this "catch up" period when the back corner evened up with the front corner.

Study of Figures 4A and 4G reveal that movement due to subsidence at the house lasted for about a month and a half, over a mining distance of 349 feet. A full month was required to reach maximum subsidence at the front corner; the worst condition of differential subsidence occurred after 7 days of movement, 105 feet after movement began. It should be noted that the longwall unit was producing only four days per week due to a recessionary period in the economy. Damage may have been mitigated if a seven day production schedule had been followed while mining under the house.

Figure 5 shows the final subsidence profile across the mined out face at the front of the house. The dwelling is seen to be practically at mid-panel and sitting at the bottom of a large trough. A differential subsidence of 0.18 feet remained at the front of the house because of the manner in which it rested on this trough. No continuing damage to the structure has been noticed.

Figures 6A through 6C present contours for subsidence over a 600-foot advance of the face. These appear typical for the entire grid, as witnessed by a profile selected at random across the face between distance markets 13 + 60 and 17 + 36.

CONCLUSIONS

It can be said that more understanding than controlling of subsidence occurred in this instance. Experiences of other mining companies in the Southwestern Pennsylvania area indicate that some success has been achieved in making agreements with home owners without incurring great subsidence damage liabilities. Prior to affecting such an agreement ourselves, it was believed that 400 feet of overburden, the fact that the house lay in mid-panel both ways, and the obvious structural soundness of the house itself were good reasons for undertaking the risk. Excavation of a trench to control lateral movement, which was believed to be the greatest threat, actually had no effect on preventing damage in this case. Jacks which were set in the basement to help stabilize the house did not help either. The basement floor sagged and loosened the jacks, and tightening them up did nothing to prevent development of stresses in the frame of the house or in foundation walls. It should be stressed that if the rate of mining could have been accelerated and/or if mining could have been maintained 7 days per week, then damage may have been mitigated. In conclusion, if an agreement is to be made in the future in this area, then similar damage must be expected and planned for financially. Depending upon the location of the dwelling, it may or may not prove fiscally prudent to undermine it. Each situation will have to be evaluated separately. If a dwelling can be planned around, then it should be avoided.

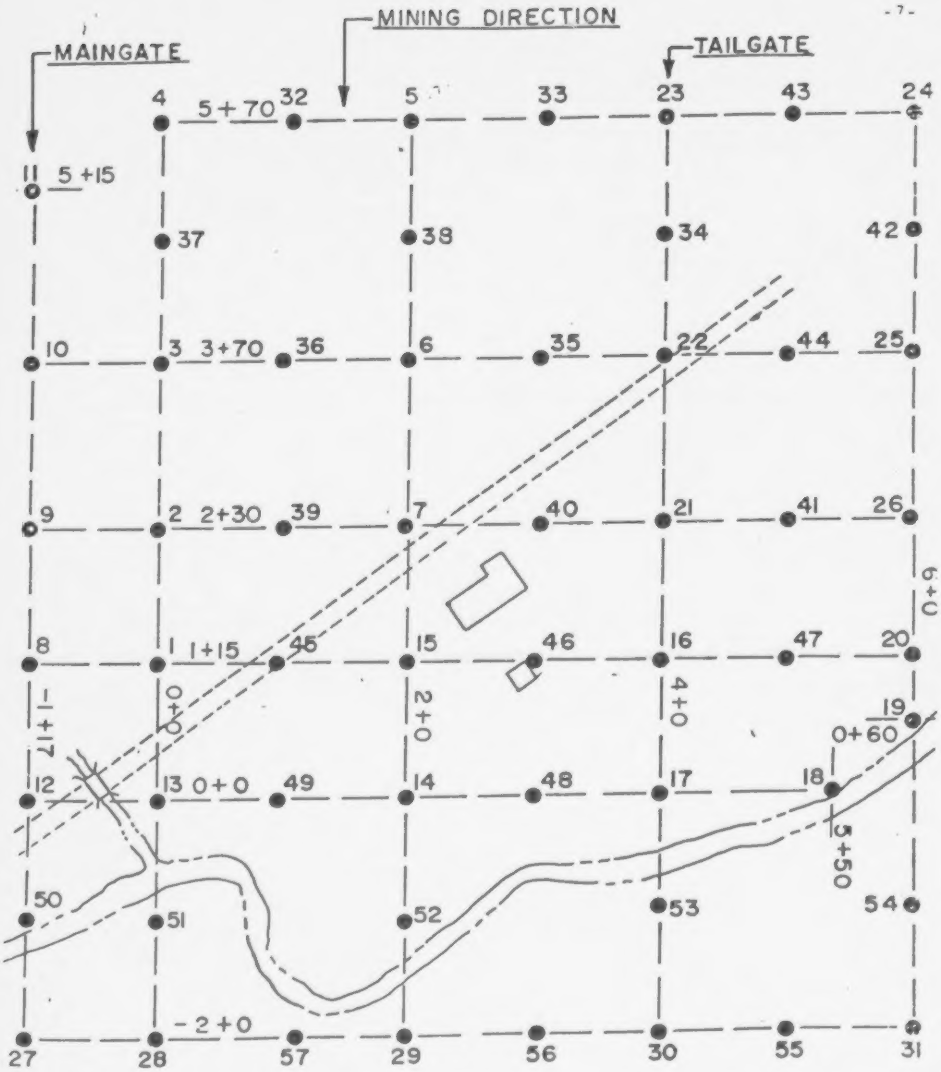


Figure 1. Survey Grid for Monitoring Longwall Subsidence.

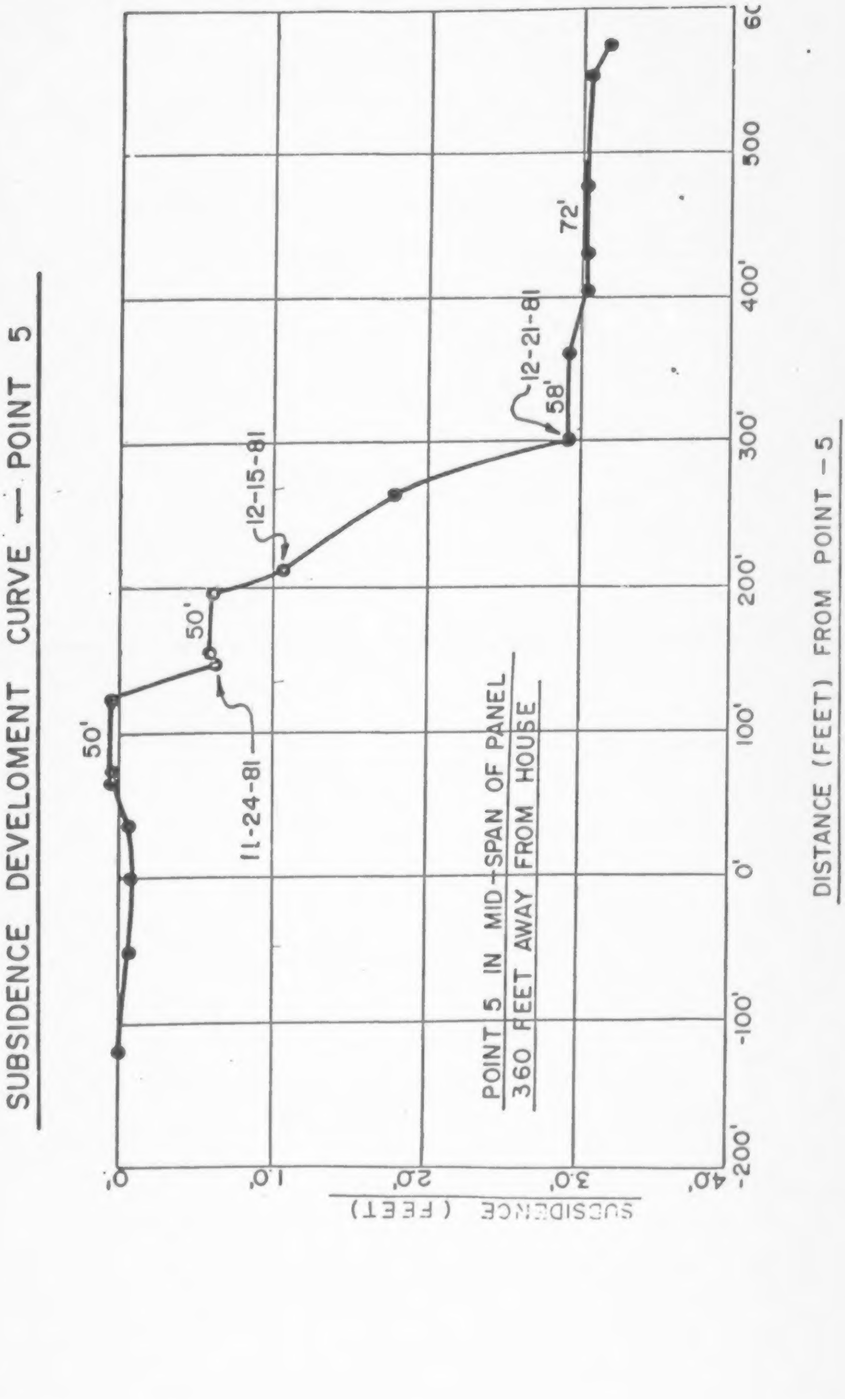


Figure 2. Subsidence Development Curve - Point 5

TABLE I. DATA FOR SUBSIDENCE PROFILE AT POINT 5 (13 + 75 STN IN 11D)

$W/h = \frac{432 \text{ FT}}{473 \text{ FT}} = 0.913$ INITIAL ELEV = 1083.1

1. SUBSIDENCE AS % S	0	0	1.89	2.21	1.89	-	-	-	19.87	19.24	19.24	33.75
2. SUBSIDENCE IN FEET	0	0	-0.06	0.07	-0.06	+0.05	+0.04	+0.04	-0.63	-0.61	-0.61	-1.07
3. DISTANCE FROM PT. 5 IN TERMS OF h	0.56	0.26	0.11	0	0.08	0.14	0.16	0.26	0.31	0.33	0.41	0.44
4. DISTANCE FROM PT. 5 IN FEET	-265	-121	-50	0	+37	+66	+75	+122	+148	+155	+196	+210
5. DATE	10/10/81	10/21/81	10/28/81	11/3/81	11/5/81	11/10/81 11/12/81	11/17/81	11/19/81	11/24/81 12/1/81	12/4/81 12/7/81	12/10/81	12/15/81
6. FACE LOC'N	11 + 10	12 + 54	13 + 25	13 + 76	14 + 12	14 + 41	14 + 50	14 + 97	15 + 23 15 + 30	15 + 30	15 + 71	15 + 85

TABLE I. Continued

1. SUBSIDENCE AS % S	56.15	91.80	92.11	96.21	95.58	95.27	97.16	100.00
2. SUBSIDENCE IN FEET	-1.78	-2.91	-2.92	-3.05	-3.03	-3.02	-3.08	-3.17
3. DISTANCE FROM PT. 5 IN TERMS OF h	0.56	0.64	0.76	0.85	0.91	1.01	1.13	1.21
4. DISTANCE FROM PT. 5 IN FEET	+266	+303	+361	+404	+430	+476	+535	+574
5. DATE	12/17/81	12/21/81	12/23/81	12/30/81	1/5/82	1/7/82	1/12/82	1/15/82
6. FACE LOC'N	16 + 41	16 + 78	17 + 36	17 + 79	18 + 05	18 + 51	19 + 10	19 + 49

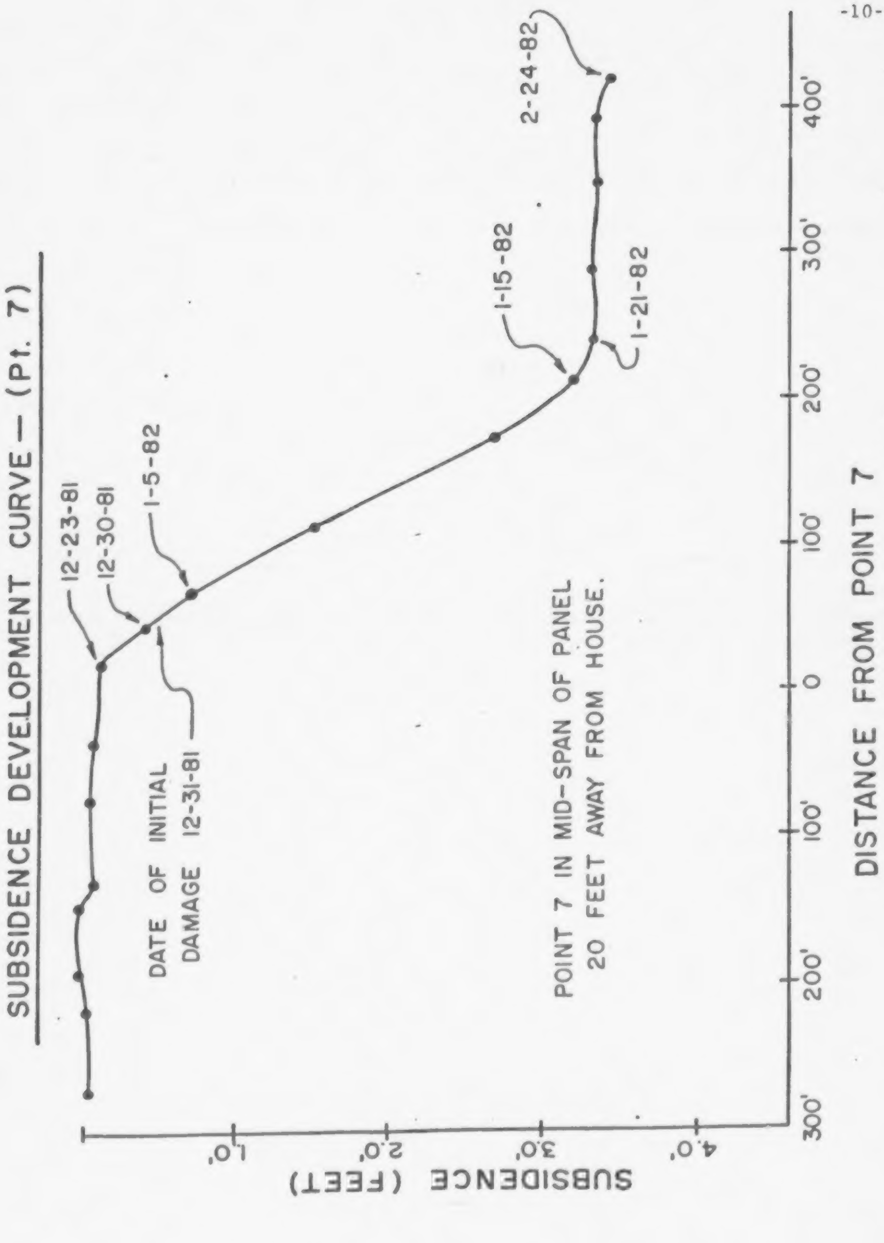


Figure 3. Subsidence Development Curve - Point 7

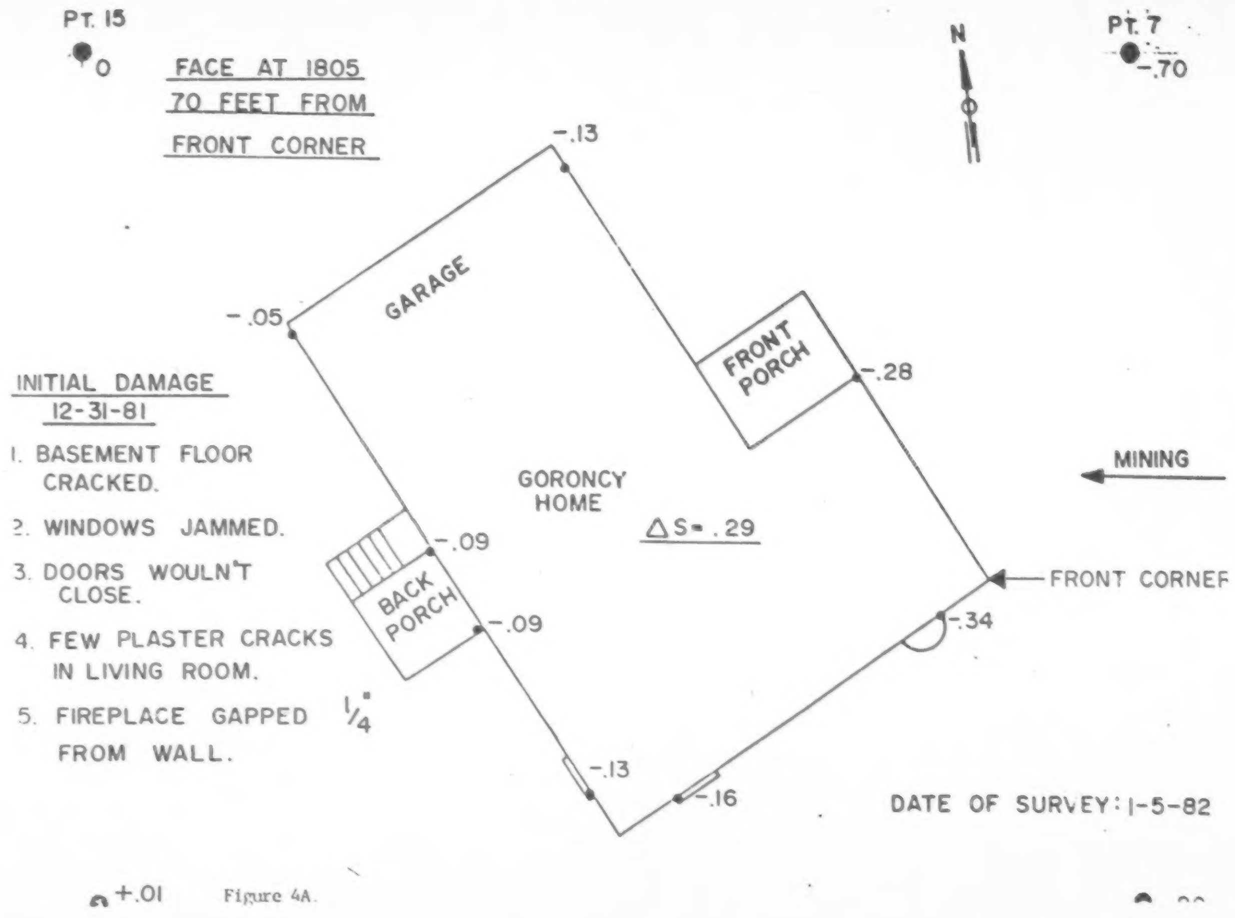
TABLE II DATA FOR SUBSIDENCE PROFILE AT POINT 7 (17 + 15 STN IN LW)

W/h = $\frac{432 \text{ FT}}{421 \text{ FT}}$ = 1.026 INITIAL ELEV = 1034.79

1.	SUBSIDENCE AS % S	0	0.29	0	0.29	0.29	0.88	0.88	0.88	-	-	-	1.76
2.	SUBSIDENCE IN FEET	0	-0.01	0	-0.01	-0.01	-0.03	-0.03	-0.03	+0.01	+0.01	+0.01	-0.06
3.	DISTANCE FROM PT. 7 IN TERMS OF h	1.44	1.10	0.93	0.81	0.72	0.65	0.63	0.52	0.46	0.44	0.34	0.31
4.	DISTANCE FROM PT. 7 IN FEET	-605	-461	-390	-340	-303	-274	-265	-218	-192	-185	-144	-130
5.	DATE	10/10/81	10/21/81	10/28/81	11/3/81	11/5/81	11/10/81 11/12/81	11/17/81	11/19/81	11/24/81 12/1/81	12/4/81 12/7/81	12/10/81	12/15/81
6.	FACE LOC'N	11 + 10	12 + 54	13 + 25	13 + 76	14 + 12	14 + 41	14 + 50	14 + 97	15 + 23 15 + 30	15 + 30	15 + 71	15 + 85

TABLE II Continued

1.	SUBSIDENCE AS % S	1.17	1.76	3.52	12.02	20.53	45.16	78.30	93.84	97.65	96.48	98.24	97.36	100.00
2.	SUBSIDENCE IN FEET	-0.04	-0.06	-0.12	-.41	-.70	-1.54	-2.67	-3.20	-3.33	-3.29	-3.35	-3.32	-3.41
3.	DISTANCE FROM PT. 7 IN TERMS OF h	0.18	0.09	0.05	0.10	0.17	0.28	0.42	0.51	0.57	0.69	0.83	0.94	0.995
4.	DISTANCE FROM PT. 7 IN FEET	-74	-37	+21	+44	+70	+116	+175	+214	+241	+292	+348	+395	+419
5.	DATE	12/17/81	12/21/81	12/23/81	12/30/81	1/5/02	1/7/82	1/12/82	1/15/82	1/21/82	2/4/82	2/12/82	2/19/82	2/24/82
6.	FACE LOC'N	16 + 41	16 + 78	17 + 36	17 + 79	18 + 05	18 + 51	19 + 10	19 + 49	19 + 76	20 + 27	20 + 83	21 + 30	21 + 54

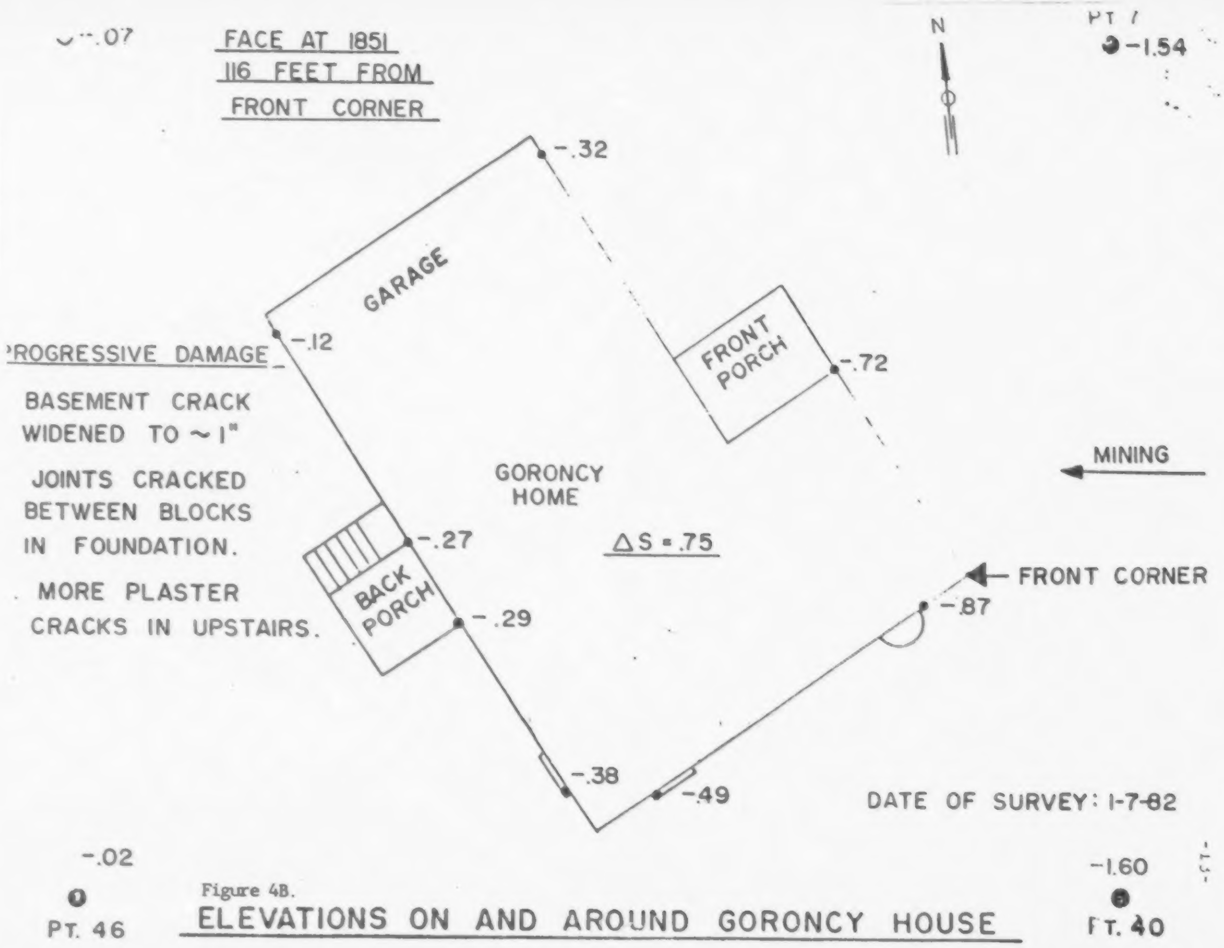


INITIAL DAMAGE
12-31-81

1. BASEMENT FLOOR CRACKED.
2. WINDOWS JAMMED.
3. DOORS WOULN'T CLOSE.
4. FEW PLASTER CRACKS IN LIVING ROOM.
5. FIREPLACE GAPPED 1/4" FROM WALL.

DATE OF SURVEY: 1-5-82

Figure 4A.



ROGRESSIVE DAMAGE

BASEMENT CRACK WIDENED TO ~ 1"

JOINTS CRACKED BETWEEN BLOCKS IN FOUNDATION.

MORE PLASTER CRACKS IN UPSTAIRS.

DATE OF SURVEY: 1-7-82

Figure 4B.
ELEVATIONS ON AND AROUND GORONCY HOUSE

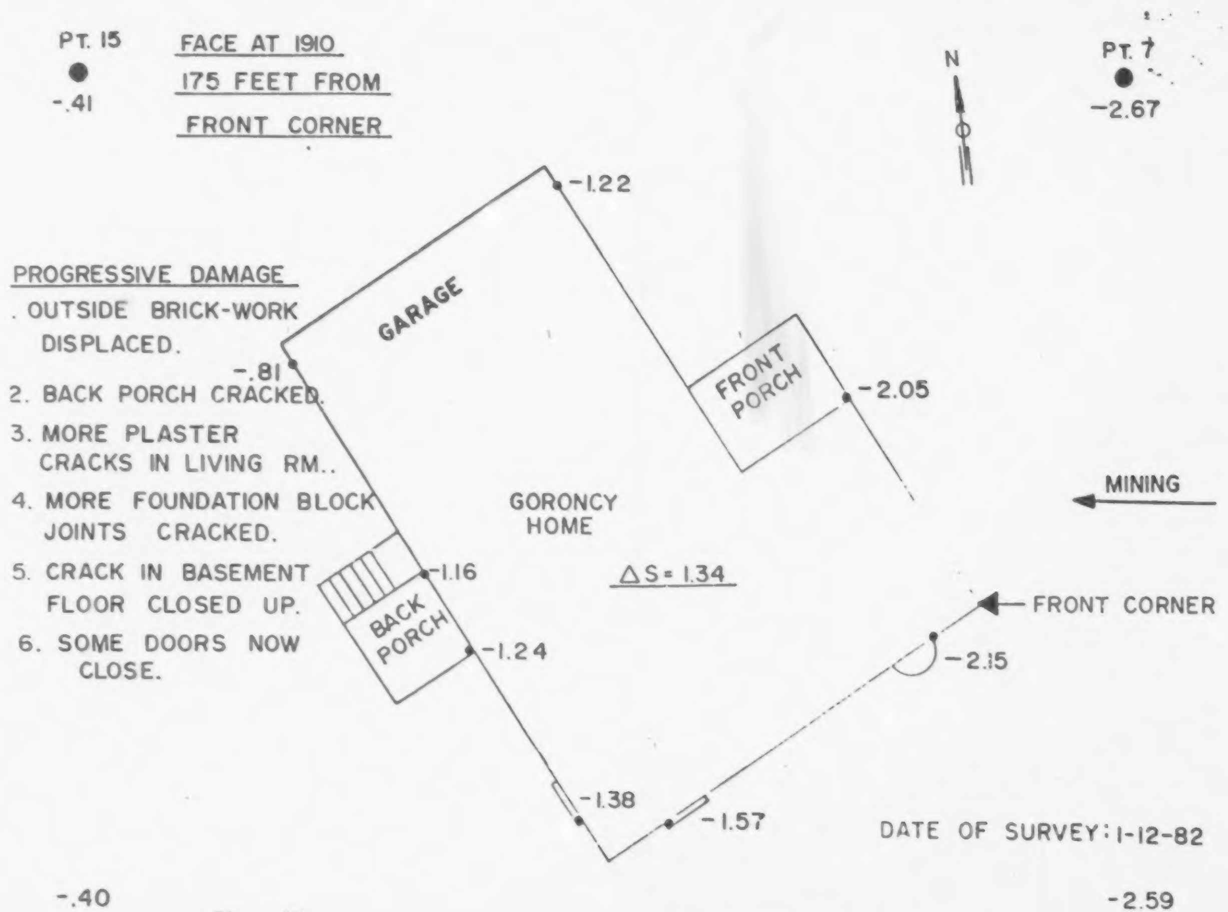

PT. 15
-.41
FACE AT 1910
175 FEET FROM
FRONT CORNER
N
PT. 7
-2.67
PROGRESSIVE DAMAGE
. OUTSIDE BRICK-WORK DISPLACED.
2. BACK PORCH CRACKED.
3. MORE PLASTER CRACKS IN LIVING RM..
4. MORE FOUNDATION BLOCK JOINTS CRACKED.
5. CRACK IN BASEMENT FLOOR CLOSED UP.
6. SOME DOORS NOW CLOSE.
GARAGE
-1.22
-.81
FRONT PORCH
-2.05
GORONCY HOME
ΔS = 1.34
-1.16
BACK PORCH
-1.24
-1.38
-1.57
-2.15
FRONT CORNER
MINING
DATE OF SURVEY: 1-12-82
-.40
-2.59

Figure 4C.

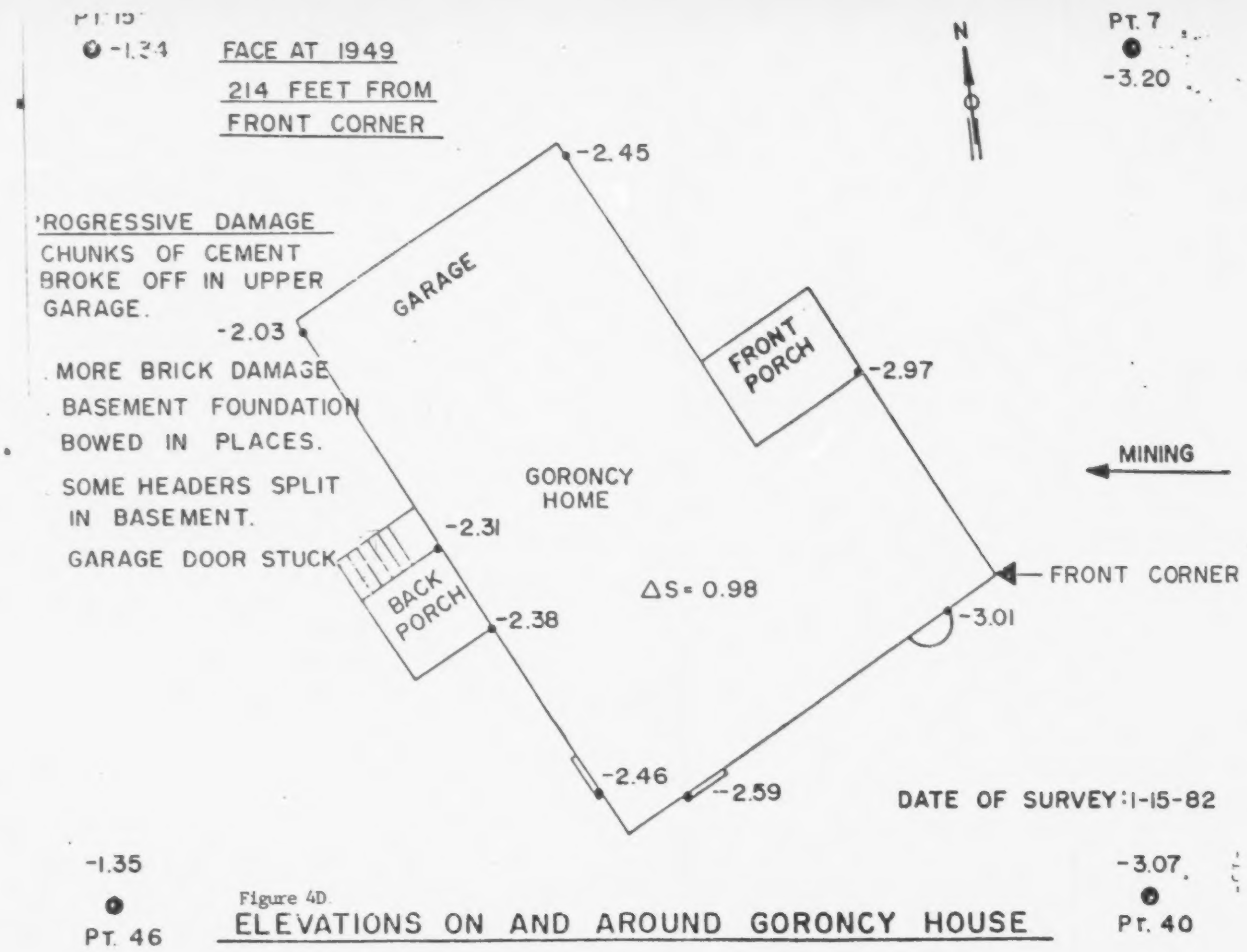


Figure 4D.
ELEVATIONS ON AND AROUND GORONCY HOUSE

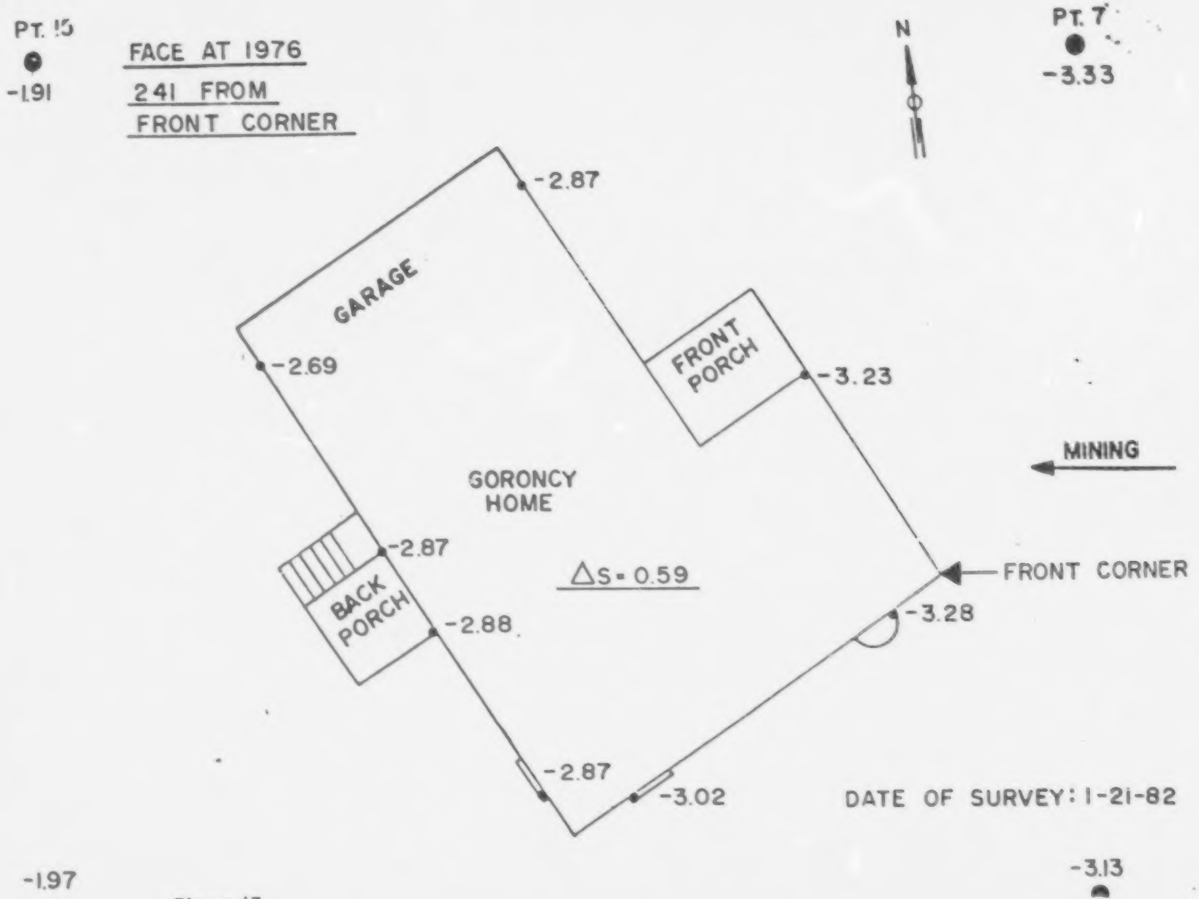

PT. 15
-1.91
FACE AT 1976
241 FROM
FRONT CORNER
N
PT. 7
-3.33
GARAGE
-2.87
-2.69
FRONT PORCH
-3.23
MINING
GORONCY HOME
-2.87
BACK PORCH
-2.88
ΔS = 0.59
FRONT CORNER
-3.28
-2.87
-3.02
DATE OF SURVEY: 1-21-82
-1.97
-3.13

Figure 4E.

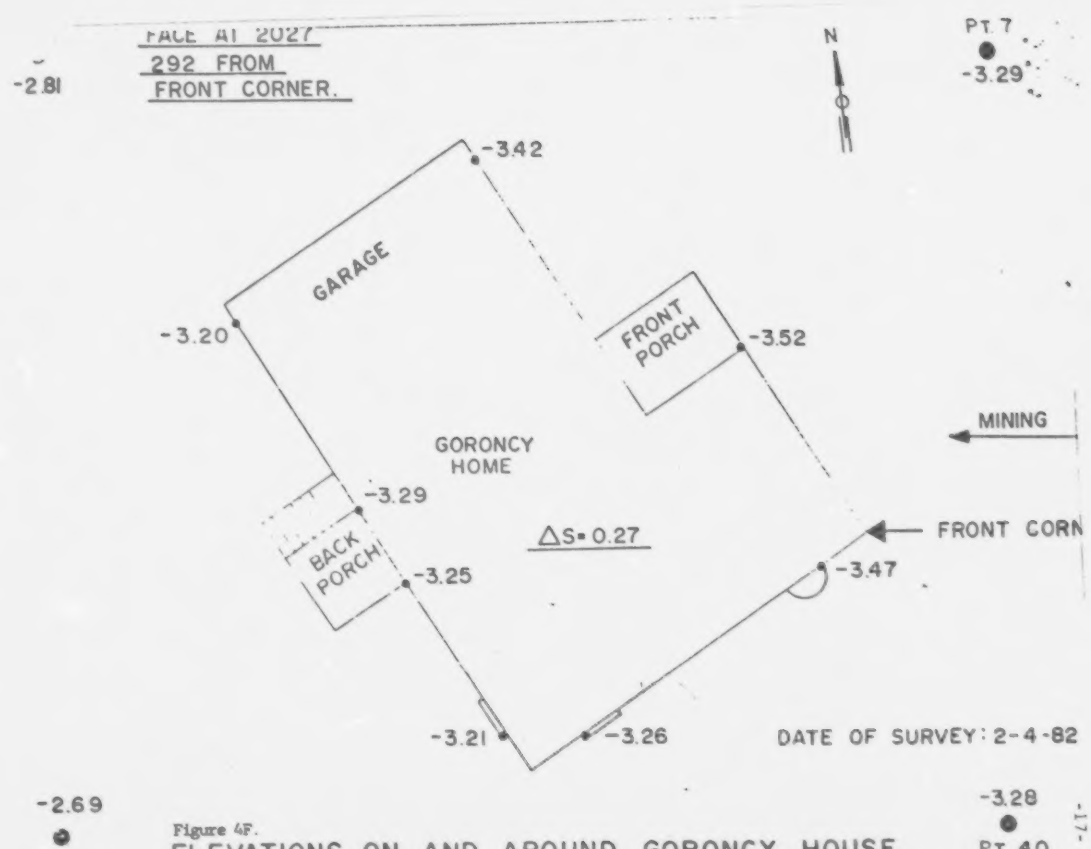


Figure 4F.
ELEVATIONS ON AND AROUND GORONCY HOUSE

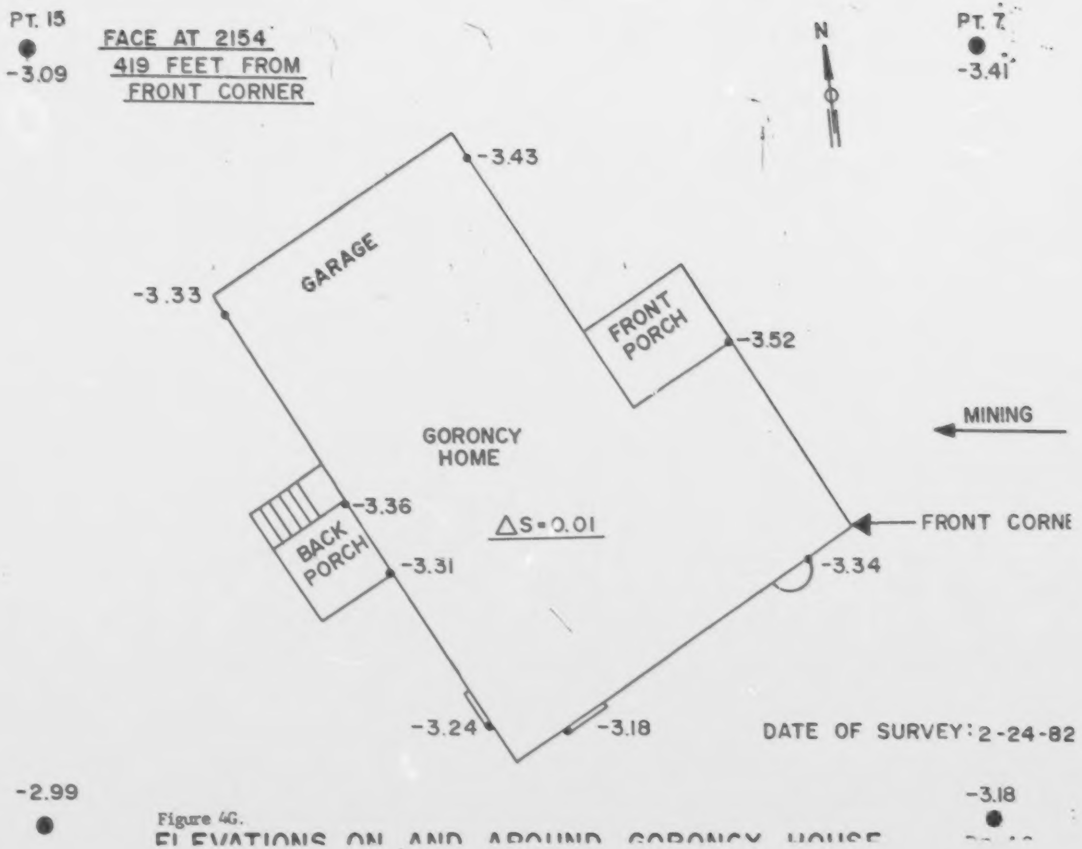
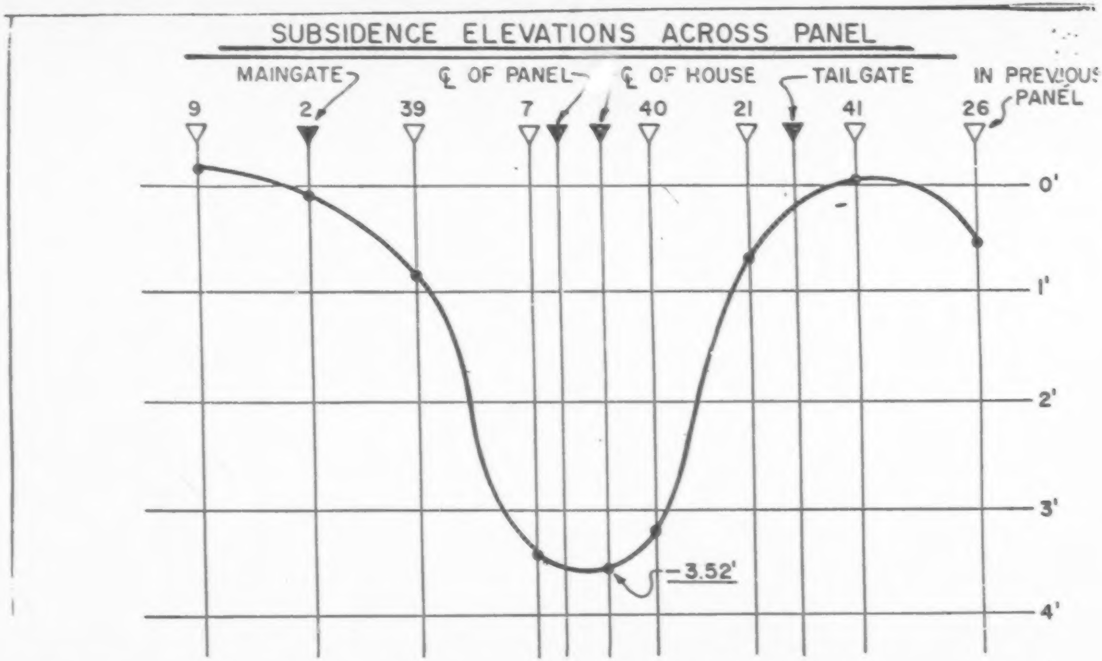


Figure 4G.
ELEVATIONS ON AND AROUND GORONCY HOUSE

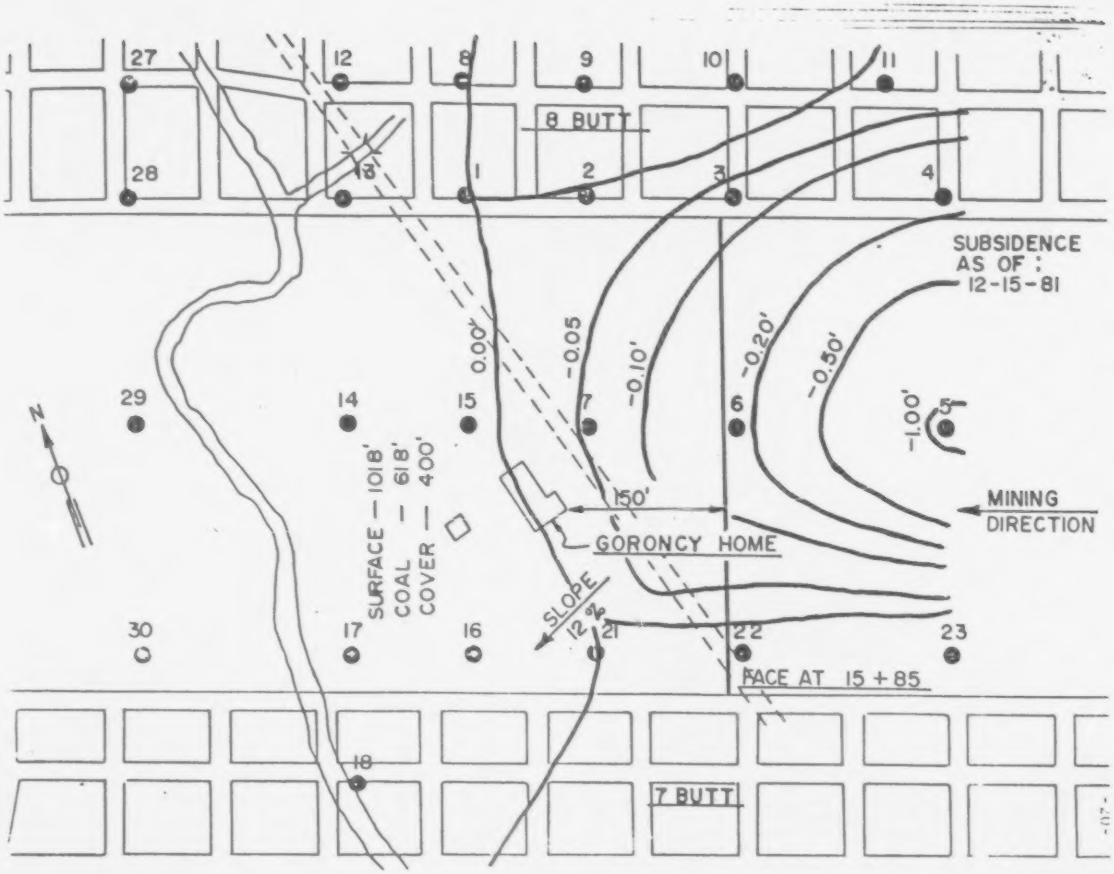


ORIG. EL. —	1023.33	1031.83	1038.85	1034.79	1031.54	1026.18	1019.33	1019.63
NEW EL. —	1023.50	1031.76	1038.02	1031.32	1028.36	1025.52	1019.41	1019.10
SUBSIDENCE	+ 0.17'	− 0.07'	− 0.83'	− 3.14'	− 3.18'	− 0.66'	+ 0.08'	− 0.53'

MINING HEIGHT — 74"

DATE OF SURVEY : [illegible]-24-82

Figure 5. Final Subsidence Profile across Face at House


SUBSIDENCE
AS OF :
12-15-81
MINING
DIRECTION
-1.00'
-0.50'
-0.20'
-0.10'
-0.05
0.00'
150'
GORONCY HOME
SLOPE
12%
FACE AT 15 + 85
SURFACE — 1018'
COAL — 618'
COVER — 400'
8 BUTT
7 BUTT
N
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
21
22
23
27
28
29
30
-20-

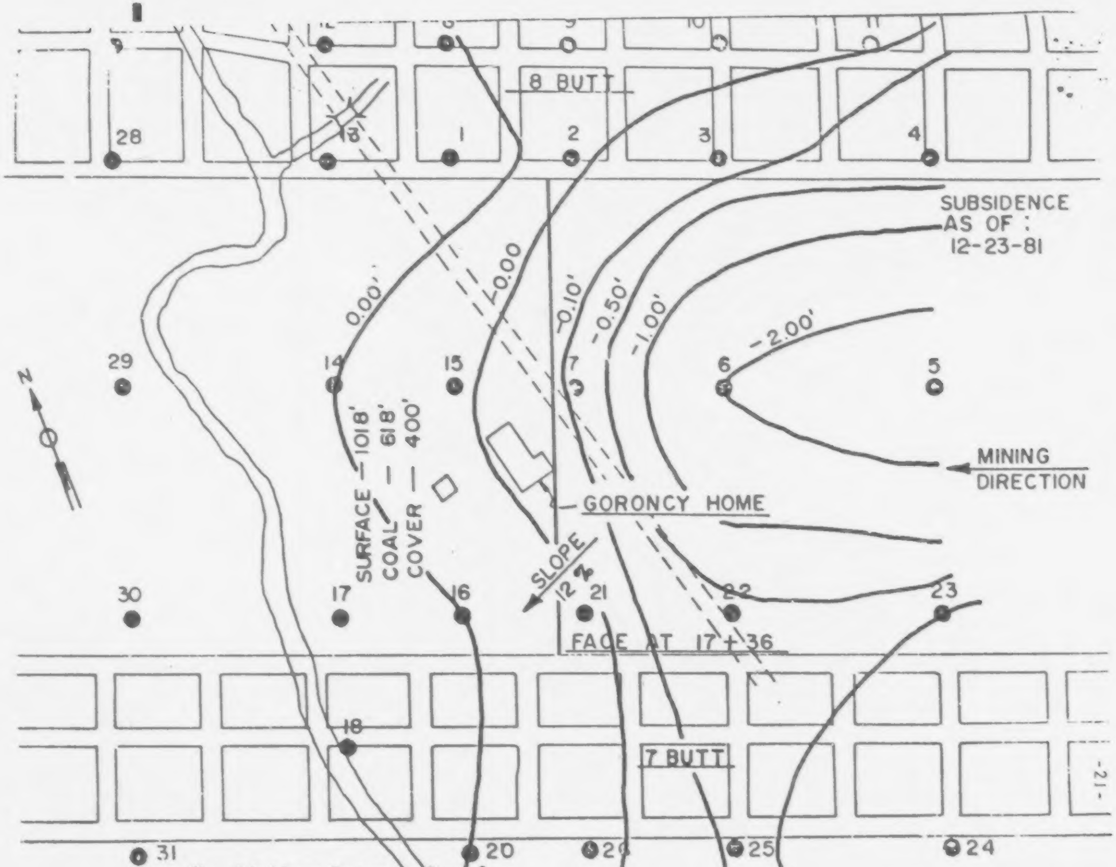


Figure 6B. Subsidence Contours - Stage 2.

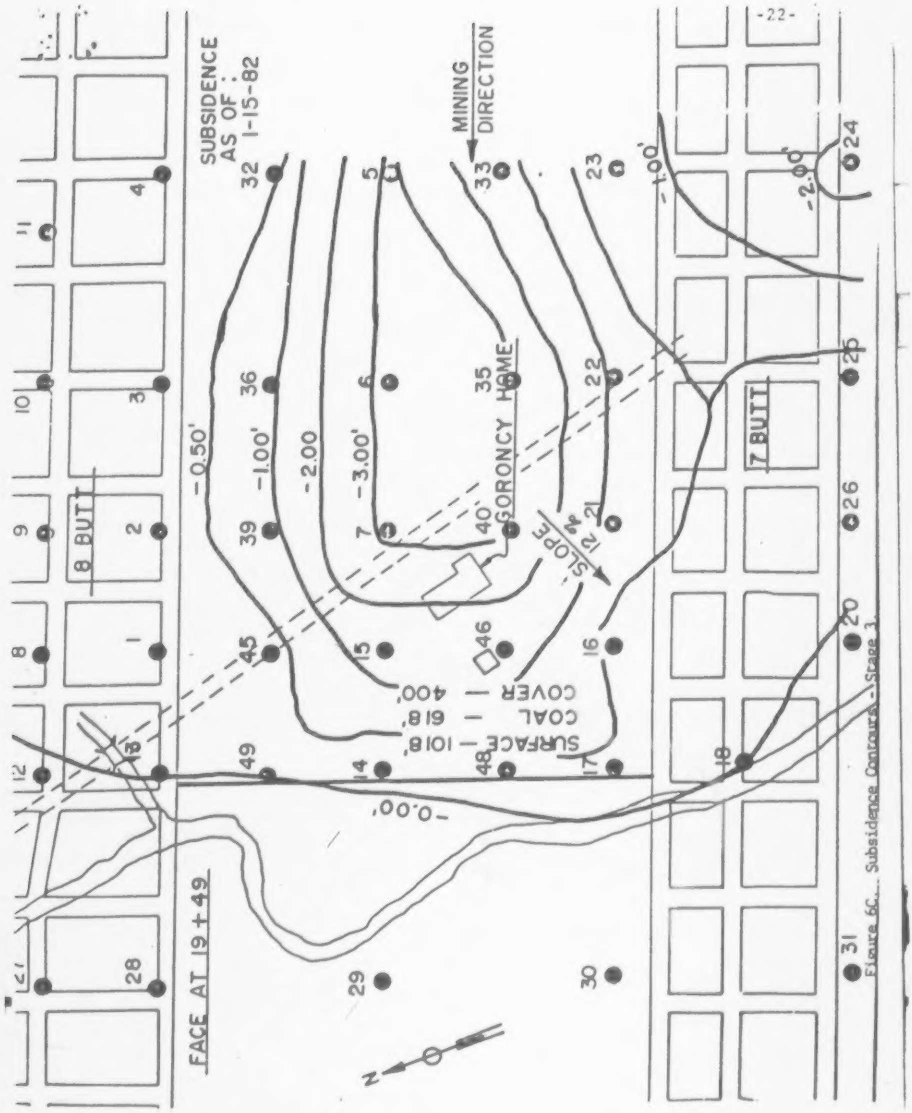


Figure 6C. Subsidence Contours - Stage 3.

VIRGINIA IRON, COAL AND COKE COMPANY
SUBSIDIARY OF ANR COAL COMPANY
P.O. DRAWER C, COEBURN, VIRGINIA 24230
Telephone 703 395 3316

April 26, 1984

Mr. Roger Sindelar
Counsel to the Subcommittee
on Energy and Mineral Resources
Room SD-306
United States Senate
Washington, D.C. 20510

Dear Mr. Sindelar:

Enclosed for your use is a copy of the remarks that I had prepared to make at the Subcommittee hearing last week in Richlands. I apologize for not making it to a hearing on a subject that all of us feel so strongly about; however, I could not get away that morning.

We were looking forward to meeting Senator Warner and members of his staff when they were scheduled to visit Amos Ridge and Ison Coal Company. Perhaps when the weather improves, a new tour could be arranged. I believe it would be very useful to see the actual mining activity.

Sincerely,

Robert H. Warnick, Jr.
Vice President of Operations

RHW/vv

Enclosure

COMMENTS ON "THE IMPLEMENTATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 IN THE APPALACHIAN COAL REGION"

APRIL 18, 1984

By:

Robert H. Warnick, Jr., Vice President of Operations
Virginia Iron, Coal & Coke Company
P. O. Drawer C, Coeburn, Virginia 24230

PUBLIC OVERSIGHT HEARING

Senate Subcommittee on Energy and Mineral Resources
Of The Committee on Energy and Natural Resources

"The Implementation of the Surface Mining Control and Reclamation Act of 1977 in the Appalachian Coal Region"

Introduction - My name is Robert Warnick, Jr. I am Vice President of Operations for Virginia Iron, Coal and Coke Company (VICC) located in the town of Coeburn in Wise County, Virginia. VICC is a significant land and mineral holder in South-western Virginia controlling over 60,000 acres of land and mining and processing over 2.0 million tons of coal per year. Through our contractors, we are currently surface mining approximately 1.0 million tons per year.

I am very pleased to come before your subcommittee to offer my thoughts on the "Surface Mining Control and Reclamation Act of 1977" (the Act). As one who has worked under its influence for the past several years, I feel that now, seven years after its enactment and with the wealth of information available as to its effectiveness, it is appropriate for the Congress and all affected parties to speak out regarding the successes and failures of the Act's implementation. The most prominent of many factors which makes our Appalachian coal region unique is the steep slopes which the coal underlies. Because of this natural terrain, we received the major impact of the Act. In steep areas, three major problems exist due to the implementation of the Act. These are in the areas of reestablishment of Approximate Original Contour (or AOC), post-mining land use, and highwall elimination.

AOC and Post-Mining Land Use - Because the steep terrain provides little area for alternatives, the land in this area has been used for two major industries - timbering and coal mining. Even with all its natural beauty, the steep slopes have forced most residential sites to be located in the flood plains. This in itself is an environmental factor which shouldn't be overlooked. In keeping with environmental regulations, there should be a viable source to maintain the mountain's splendor while keeping the community environmentally safe and at the same time enable the area to prosper and grow in a positive and nonrestrictive way.

In our area the most prevalent method of surface mining is contour mining. In this type of mining, it is very difficult to leave the land suitable for anything other than unmanaged forest because of the slopes that are usually mined. By reclaiming the land to AOC, we are returning the land to steep slopes. Area mining or mountaintop removal enables the operator to leave land more suitable for development. However, in order to comply with AOC stipulations, the operator may not be able to leave the land in a condition that would best serve the owner or the region's development plans. Surface mining represents the single best opportunity to reshape the land of Appalachia to make it productive after the coal is gone. What is required is that there be flexibility to allow the development of legitimate land users so as to spur private industrial and agricultural investment in our region. With an abundant supply of energy, water resources and people, our region might be able to develop other industry if land is made available for its development. I understand that the present regulation is a way of preserving the environment but I wonder if at the same time there couldn't be some method to improve the situation instead of returning it to a nonproductive state.

Highwall Elimination - In second cut mining if it can be demonstrated that sufficient spoil for elimination is not available on site, the current regulations allow for leaving a portion of the highwall unreclaimed. This

/

requirement is probably adequate for most mining areas in the United States. However, for the Appalachian coal region, this is not sufficient. Here, another factor comes in to play. The steep sloped terrain allows for much narrower cuts leaving little bench width for spoil placement. In many steep slope areas at the maximum angles allowed to achieve the required stability, the highwall can not always be completely eliminated. Therefore, excess spoil is generated and the regulatory requirement of no excess spoil area without complete highwall elimination cannot be met. As a result, millions of tons of coal reserves must currently be considered unmineable. Certainly the aesthetic value of the land is of concern, but in this region cliffs and rock outcroppings abound naturally without anyone proposing to cover them. Who is to say that the manmade highwall segments that would exist by allowing a small portion to be left by mining are not of value if they make the land more productive and/or allowed the coal reserves to be mined in the first place.

Many instances come to mind where partial elimination of the highwall could be justified. Why not allow some flexibility in the Act if operating considerations and bonding requirements are met. Again, the question of post mining land use and future mining reserves becomes a factor. Partial elimination of a highwall should be allowed, even if excess spoil is created as long as the following can be demonstrated:

1) The wall is backfilled to the maximum extent possible to achieve a 1.3 static safety factor.
2) The remaining wall is in a stable condition.
3) All drainage is controlled.
4) The excess spoil disposal area complies with all applicable regulations.

One other extremely expensive and virtually useless requirement of the Act that I would like to briefly touch cn is the continued drilling of additional groundwater wells and piezometers for monitoring purposes. Since the onset of the Act, we have been required to drill well after well on each permit site for the purpose of monitoring groundwater for possible degradation of groundwater sources due to mining activity. Since that point in time, hundreds of wells have been drilled throughout Virginia's seven coal counties alone. When the entire Appalachian coal region is considered, those hundreds of monitoring wells would become thousands. It appears that here, again, a legitimate concern for the mining effects in another region caused a regulation to be enforced across all regions that in our area has resulted in the expenditure of considerable moneys for little or no gain in knowledge.

In many cases, we have been required to drill wells in areas where the groundwater system was felt to be nonexistent. After drilling and continually monitoring these "token wells", per regulatory requirements, they were found to be consistently dry thus substantiating our original conclusions. This concept was substantiated by the USGS study done in the area two years ago. Also, any current data that is conclusive is available in the Virginia DMLR records. Due to the quantity of such data, the necessity of drilling additional wells should be eliminated except in very isolated cases.

Conclusion - As you investigate the effectiveness of the implementation of the Act, I hope you will take the opportunity to inspect in the field the fruits of the labor. I don't believe any of the operators that you speak with or whose operations you review will speak of the need to eliminate the Act or of tremendous change. I feel that the most prevalent comment will be one of flexibility. Most of us want to be responsible mine operators, to mine the coal in a safe and productive manner and to leave the land in a way to produce viable economic uses after the coal is gone. We only ask that there be some distinction between the legitimate mining concerns of particular regions so that we can operate and produce the energy that our coal represents. I would also hope that the review of the Act could be stated as soon as possible so that meaningful dialogue and change could be implemented before our industry is depleted.

It is inconceivable that at a time when energy conservation is so predominate in the minds of our citizenry, when the world's oil producing countries are in turmoil and when there is so much public concern about the use of nuclear energy, that so great a source of energy as our low-sulphur Appalachian coal needs to be written off because of the lack of flexibility of the regulations. By bringing some flexibility to the regulations and by allowing operators and regulators to work to the common goal of responsible reclamation through responsible mining practices, the Acts intentions could be served and the coal could still be mined.

Thank you.

April 19, 1984

Roger Sindelar
Subcommittee on Energy and
  Mineral Resources
United States Senate
Room SD-366
Washington D.C. 20510

Dear Roger:

Enclosed is my testimony for the record in the hearing of the Subcommittee on Energy and Mineral Resources on "The Implementation of the Surface Coal Mining Control and Reclamation Act of 1977."

The testimony is submitted pursuant to the invitation of Senator Warner, and is submitted by myself on behalf of the Appalachian Research and Defense Fund of Kentucky, Inc. (Appalred).

Please enter this in the hearing record and circulate copies to the appropriate persons. Thanks very much for your invitation and for your assistance.

Sincerely,

Thomas J. FitzGerald
1440 Christy Avenue
Louisville Ky. 40204

TESTIMONY OF
HON. THOMAS J. FITZGERALD
FOR
THE APPALACHIAN RESEARCH AND DEFENSE FUND OF KENTUCKY, INC.
ON THE
IMPLEMENTATION OF THE SURFACE COAL MINING AND RECLAMATION ACT OF 1977

April 19, 1984

INTRODUCTION

The following testimony is submitted by Hon. Thomas J. FitzGerald, Attorney at Law, on behalf of the Appalachian Research and Defense Fund of Kentucky, Inc., a Legal Services Corporation grantee providing free legal assistance to low-income eastern Kentuckians, who are adversely affected by improper coal mining and reclamation practices, and who have been aggrieved by the failures in the implementation of the Kentucky permanent regulatory program for surface coal mining and by the failure of oversight of the Office of Surface Mining, Department of Interior.

The Appalachian Research and Defense Fund of Kentucky, Inc. greatly appreciates the request from Senator Warner to submit written testimony regarding this subject, and appreciates also the continuing interest and concern of the Subcommittee on Energy and Natural Resources with the full and proper implementation of the 1977 law.

THE KENTUCKY EXPERIENCE

On May 18, 1982, Kentucky received conditional approval of its permanent regulatory program for surface coal mining. Several conditions were placed on the Kentucky program, and since that time, some of the conditions have been satisfied, while others have been placed on the approved program, due to changes by the state in its laws and regulations.

It is in the area of state program changes, and OSM oversight of the continuing integrity of the approved state program, that the discussion begins.

The Kentucky General Assembly made a number of changes to the surface mining statutes, which changes became effective immediately and were implemented by Kentucky without complying with the federal law and regulations. Among those changes were the deletion of the Act's coverage of off-site coal crushing and screening facilities, a provision to defer reclamation on mine sites for as much as two-and-one-half years for "coal marketing problems," and other changes which were implemented by the state immediately upon passage of the laws, without prior approval of the program amendments by OSM.

30 Code of Federal regulation 732.17(g) provides that

> Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.

Thus, the State was in clear violation of the Secretary's regulations, and the integrity of the state program process was placed in jeopardy. It was incumbent on the Director to act to prevent the incremental alteration of the state program by requiring compliance with the prior approval provision.

In July, 1982, the Director was notified of the problem with Kentucky, and requested to begin to review the Kentucky program. The Director declined to do so, promising instead an expedited review of the substance of those program changes. The question of the proper procedure for state program changes was not resolved by the Director, and in later rulemaking changes, Kentucky continued to implement programmatic changes without proper adherence to the prior approval requirement.

Neither did the expedited review of the changes occur. The Office of Surface Mining, in violation of the six-month timeframe in its own rules for final agency action on any state program amendment, failed to render a decision on the coal marketing deferral until thirteen months after the amendment had been submitted, and until after many deferrals had been issued by the state, with resulting environmental damage. The Office has yet to render a final decision on another of the 1982 Kentucky General Assembly actions.

The problems with the state laws and regulations are dwarfed by the actual damage that has been occurring as a result of the state's failure to adequately implement its approved state program. The problems generally fall into two categories: improper and untimely permit review, and failures in inspection and enforcement.

In the area of permit review, the state has consistently slipped every statutory deadline for transitioning the interim program permits into the permanent regulatory program. Under the Act, all existing operations were to have applied for a permanent program permit within two months after the state achieved "primacy," and the agency was to have made a final determination on those permit applications within eight months after primacy. The Secretary altered these deadlines greatly, requiring of Kentucky only that: within eight months after primacy, the permanent applications be submitted, and within twenty months after primacy, the process be completed. Internal timetables were promised by the state, and were theoretically to be enforced by the Office. As soon as the ink was dry on the conditional approval, Kentucky began to alter the process. Instead of requiring complete applications on January, 1983 (eight months after primacy), the operator was not required to submit the technical data on geology and hydrology until the permit was to be reviewed later in that year. As the deadlines for the transitioning permits approached, they were rolled back, and in mid-1983 it became apparent that the twenty month deadline would not be achievable. Despite continued protestations and requests for OSM intervention, OSM failed to take meaningful steps to arrest the incremental delays in transitioning. Finally, in January of 1984, it became apparent that Kentucky had but merely begun the process of permanent program permit review, and the Office granted another delay to Kentucky until late 1984 to complete the process. For the first time, OSM finally placed a quota on permit decisions.

During the same period, Kentucky processed new permanent program applications, and granted a greatly increased number of "two-acre" permit applications, rather than concentrating its efforts on transitioning, active operations.

Part of this problem stems from the insufficiency of oversight of Kentucky permitting staff as well. Over the objection of this and other commenters in 1982 that the permit review staff projected by Kentucky was insufficient to handle the increased workload, the Secretary awarded primacy to Kentucky. The already meager staff number has not been met by Kentucky, and yet the Office did nothing to demand that the state staff the permit branch up to the level that they had committed to in order to assume responsibility over the permanent regulatory program. This problem continues, and is exacerbated by budgetary cutbacks for the 1984-1986 biennium. The Office of Surface Mining has a duty, which has not been exercised, to require staff increases up to the committed levels, or to require a state program amendment.

The impact of the failure to timely review and process the permanent program permits is not academic or ephemeral. Communities, such as Harlan County, Kentucky, have suffered subsidence damage which is unaddressed by the Act during the interim program. If the operation had been under a permanent program permit, a subsidence control plan and assurance of compensation for damage would be required, but under the interim program permit held by the company, no such measures were required.

In another community, under the permanent program, underground disposal of mine processing wastes is in many cases strictly limited or prohibited. Under the interim permit, such injection was allowed, to the detriment of the community and the hydrologic balance in the area.

Where permanent program permits have been issued, the threat to the hydrologic regime continues, because of insufficient data and the routine granting of impermissible waivers from the hydrologic consequences determination by the state agency.

The Act clearly requires that the operator applying for a permanent program permit collect sufficient data as a base-line on surface and ground water, as well as geology, and that the operator assess the probable hydrologic consequences of the mining on offsite water and water users. The Cabinet for Natural Resources and Environmental Protection, by guideline, allows an operator to apply for a "Level I" determination of no impact to the hydrologic balance. The most commonly used ground is that the mining is "geologically isolated" from any aquifers. The Cabinet does not even require site-specific data to justify such a request, and the theory of geologic isolation has no basis in fact in the eastern Kentucky coalfields, where most groundwater travels by fracture flow. The impact is that: in the first instance, the operator does not collect baseline data to demonstrate the premining condition of the mine site and its immediate environs; second, the agency cannot adequately perform the cumulative impact assessment of all mining in the area, which is also required by the Act, and finally, there is no basis upon which to determine what impacts are attributable to the operation where such damage does occur, and thus the affected public cannot demonstrate water loss and require replacement and mitigative measures. The hydrologic balance protection envisioned in the law is bypassed entirely by this approach, and the protections of the public intended are thwarted.

While OSM has noted in its first annual report on Kentucky that the state has granted groundwater waivers without first demonstrating the validity of the theory of geologic isolation, the Office has taken no action to prevent the use of the theory, and permits are at this time being issued without proper groundwater baseline data or monitoring.

Groundwater protection is, in the last analysis, source protection, because unlike surface waters, rehabilitation of groundwater once polluted or disrupted is highly unlikely and unachievable. The failure of the state and OSM in this area has caused widespread and greatly increased potential for groundwater pollution and disruption, by sanctioning mining without proper prophylactic measures to protect against, monitor, and mitigate hydrologic balance disruption.

In the area of inspection and enforcement, there are chronic problems both in OSM oversight and in Kentucky's failure to meet the minimum requirements of the Act with respect to adequacy, completeness and frequency of inspections. According to the OSM Annual Report (OSM, 1983), only 75% of the mines in Kentucky are inspected in accordance with the minimum complete inspection frequency requirements of the Act. Given that in early 1983 there were over 7,000 inspectable units in the state, covering 345,000 acres of disturbed land, this means that thousands of mines or related facilities are not being inspected adequately.

Kentucky officials admitted to the Surveys and Investigations Staff of the House Appropriations Committee that they were "short 14 inspectors." Further, there is evidence in Kentucky that the partial and complete inspections may not be adequate. The House Investigations staff noted a Kentucky:

> State inspector told the investigative staff that he was responsible for inspecting 61 mines covering 4,000 acres. He said it took him between half day and a full day to make a complete inspection and because of his workload, a partial inspection might consist of looking at a haul road to see if it's there. He said that some [Kentucky] inspectors were responsible for 100 mines and that he and the other inspectors were run ragged trying to cover their territory.
>
> Survey and Investigations Staff, Report to the Committee on Appropriations, U.S. House of Representatives, on the Regulatory Program of the Office of Surface Mining (March 1983) 8.

The inspection shortfall would be less disturbing if there was evidence that the state or OSM was enforcing adequately when they actually did inspect. Unfortunately, the evidence is directly to the contrary. In its annual report, OSM concluded that Kentucky inspectors were approximately eight times more likely to cite a violation when a federal inspector accompanied them than when the state inspectors visited the mine site alone (which, of course, ordinarily is the case). Kentucky Annual Report, I-60. This means that Kentucky inspectors fail to notice thousands of violations. The House Report noted, OSM's "finding that the state inspectors are writing violations less frequently when they are alone is even more alarming when put in the context that OSM will only accompany State inspectors on approximately 360 oversight inspections out of a total of approximately 7,200 sites and 86,400 inspections." House Report, 16.

In light of these facts, one familiar with SMCRA would assume that OSM has issued its own ten-day notices and Notices of Violations as it is required to do under Section 521 of the Act. But despite admitted non-enforcement by the State, OSM issued only eight NOV's and no cessation orders in Kentucky from April 1, 1982 to March 31, 1983. The breakdown of enforcement is thus nearly complete.

In the first Annual Report, OSM noted with approval that Kentucky had passed legislation in 1982 which made illegal mining a Class D felony, and that an illegal mining task force had been established. While some prosecution has occurred under this law, there is evidence to suggest that the current state administration is not aggressively pursuing the illegal mining using this tool or a cessation order. Instead, notices of noncompliance are being written, which allow the illegal mining to continue without having to post bond, to submit permits and reclamation plans, and without compliance with water pollution regulations. (See Appendix A).

Similarly, while acknowledging that many of the two-acre operations being conducted in the state may be actually in violation of SMCRA, because either the company is connected to another operation, or the operator has improperly excluded haul roads from the computation of the affected area, little investigation and enforcement against such abuses occurs.

CONCLUSION

The implementation of the 1977 law, and the oversight of that implementation by the Office of Surface Mining, has been less than exemplary. As a result, the protections intended to be afforded the environment and the public through the mitigation of the impacts of coal mining and procedding, have not been availing. The public, the homeowner, and the legitimate and responsible coal operator all suffer from improper permitting, lax or non-existent enforcement, and the failure to implement the laws across the board, fairly and fully. The Subcommittee is strongly urged to seek increased funding and oversight from the Office of Surface Mining, and to demand that the integrity of the state programs and the program process be maintained and guarded by the Office.

Until the Act has been fully implemented, and tested in the field, any attempts to alter the statute should not be seriously considered. If there has been an adverse impact of the law on the industry, it has been from the endless tampering by the Office with the permanent program regulations, which engender uncertainty, reward marginal compliance with the intent of the laws, and invite further litigation.

Again, on behalf of the Appalachian Research and Defense Fund of Kentucky, Inc. I thank the Subcommittee for this opportunity to submit testimony regarding the 1977 law.

Respectfully submitted

Thomas J. FitzGerald
1440 Christy Avenue
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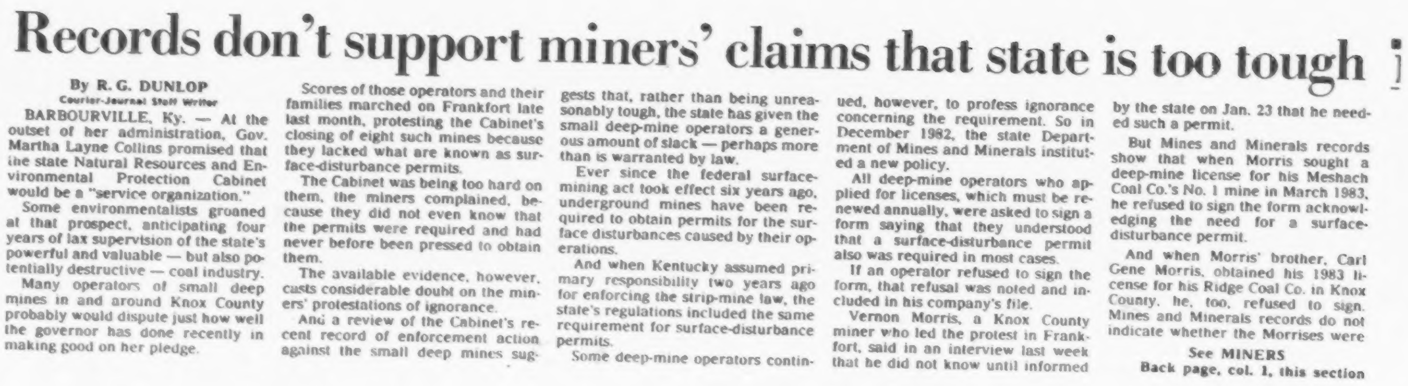
APPENDIX A



Records don't support miners' claims that state is too tough

By R. G. DUNLOP
Courier-Journal Staff Writer

BARBOURVILLE, Ky. — At the outset of her administration, Gov. Martha Layne Collins promised that the state Natural Resources and Environmental Protection Cabinet would be a "service organization."

Some environmentalists groaned at that prospect, anticipating four years of lax supervision of the state's powerful and valuable — but also potentially destructive — coal industry.

Many operators of small deep mines in and around Knox County probably would dispute just how well the governor has done recently in making good on her pledge.

Scores of those operators and their families marched on Frankfort late last month, protesting the Cabinet's closing of eight such mines because they lacked what are known as surface-disturbance permits.

The Cabinet was being too hard on them, the miners complained, because they did not even know that the permits were required and had never before been pressed to obtain them.

The available evidence, however, casts considerable doubt on the miners' protestations of ignorance.

And a review of the Cabinet's recent record of enforcement action against the small deep mines suggests that, rather than being unreasonably tough, the state has given the small deep-mine operators a generous amount of slack — perhaps more than is warranted by law.

Ever since the federal surface-mining act took effect six years ago, underground mines have been required to obtain permits for the surface disturbances caused by their operations.

And when Kentucky assumed primary responsibility two years ago for enforcing the strip-mine law, the state's regulations included the same requirement for surface-disturbance permits.

Some deep-mine operators continued, however, to profess ignorance concerning the requirement. So in December 1982, the state Department of Mines and Minerals instituted a new policy.

All deep-mine operators who applied for licenses, which must be renewed annually, were asked to sign a form saying that they understood that a surface-disturbance permit also was required in most cases.

If an operator refused to sign the form, that refusal was noted and included in his company's file.

Vernon Morris, a Knox County miner who led the protest in Frankfort, said in an interview last week that he did not know until informed by the state on Jan. 23 that he needed such a permit.

But Mines and Minerals records show that when Morris sought a deep-mine license for his Meshach Coal Co.'s No. 1 mine in March 1983, he refused to sign the form acknowledging the need for a surface-disturbance permit.

And when Morris' brother, Carl Gene Morris, obtained his 1983 license for his Ridge Coal Co. in Knox County, he, too, refused to sign. Mines and Minerals records do not indicate whether the Morrises were

See MINERS
Back page, col. 1, this section

Miners, state records disagree

Continued from Page One

asked to sign or refused to sign the forms when they obtained their 1984 licenses.

Asked about the form, Vernon Morris said he did not remember refusing to sign it.

"You're touching on technicalities that will hinge on some future decision," he said, declining to elaborate.

State and federal mining officials put little stock in the miners' claim of widespread ignorance of the law.

"My observation is that (most) miners decided not to get the permits because of the cost," said Charles Martin, deputy secretary of the Natural Resources Cabinet. "I think it was more a matter of cost than of ignorance."

W. H. Tipton, state director of the U.S. Office of Surface Mining, agrees that ignorance was not the primary problem, and noted that some of the protesting operators cannot obtain permits because they have not corrected violations at other mining operations.

Officials also said Morris had had ample warning that he needed a permit before he was cited on March 19 for not having one.

In fact, Morris acknowledges — and state officials agree — that he and other operators were warned by state investigators in January that they would receive citations if they did not promptly apply for permits.

No notices of non-compliance were issued along with those warnings, even though state law says that the Cabinet "shall forthwith" issue non-compliance notices when "any" violations occur.

John Nagle, assistant chief of the Cabinet's Office of Special Investigations, conceded last week that the law does not give investigators the leeway not to cite miners when violations are observed.

Asked why they had not issued citations in January to dozens of deep mines without permits whose operators merely received warnings, Nagle replied that it was a "discretionary call."

"The investigators felt that these operators weren't wantonly and knowingly committing a crime," Nagle said.

"We are here to help people, and we don't want to drag (them) into court if we can rectify it prior to that."

But according to Tom FitzGerald, a Frankfort attorney specializing in environmental matters, the state has no such discretion.

"If an operator is violating the law, the state has a mandatory duty to write it up," FitzGerald said. "They don't have the discretion not to write it.

"You don't get a free bite under the strip-mining act."

When state investigators did cite seven of the operations last month, they issued non-compliance notices accompanied by instructions to stop mining until the permits were obtained.

Tipton of OSM said that's what state regulations provide for, although federal regulations call for issuance of a cessation order — a more drastic enforcement action that carries stiffer penalties.

OSM has asked Kentucky to change its regulation to comply with the federal counterpart, Tipton said, but the state has not yet done so.

That being the case, FitzGerald said, OSM should set aside the state regulation or require Kentucky to implement the federal regulation immediately.

"The state law can't be less stringent than the federal law," FitzGerald said. "If it is, the state isn't in compliance with federal law."

After state officials declined to grant the small-mine operators' request for an exemption from the permit requirement and refused to let them keep mining while they applied for permits, the operators took their case to Washington last Wednesday.

But during a lengthy meeting set up by U.S. Rep. Harold "Hal" Rogers, R-5th District, OSM officials made no promises to intervene, but said they would study the situation.

If the agency does not help them, Vernon Morris said the miners would consider seeking redress in the courts.

Man shot last week dies of his wounds

A 33-year-old man who was shot in the back last Tuesday as he stood talking with acquaintances near his home at 448 S. 11th St. died last night.

Steve Ira Wooten died at 9:39 p.m. at Humana Hospital University, Deputy Coroner Lloyd Workman said.

The man who was arrested and charged with assault after Wooten was shot was charged posthumously with murder last night.

Mack Savage, 51, of 421 S. 11th St., died Saturday after being taken to Humana Hospital University from the Jefferson County Jail. Deputy Coroner Robert Carter said Savage died of natural causes.

Louisville police said officers investigated a report that several pistol shots had been fired in the area where Wooten was wounded about 8:55 p.m. last Tuesday. They said one of the shots, apparently fired at random, struck Wooten.

Natural Resources Defense Council, Inc.
Public Lands Institute
1720 RACE STREET
DENVER, COLORADO 80206
303 377-9740

February 13, 1984

Dear Member:

Enclosed is a complementary copy of Still Stripping the Law on Coal. The study indicates that there are many serious problems existing by the inadequate way inwhich OSM and the western states are implementing and enforcing the Strip Mine Reclamation Act. I encourage your attention in seeing that these regulatory agencies correct these severe problems, and carry out their responsibilities under the law as Congress intended.

Please feel free to contact me at the above number if I may be of further assistance.

Sincerely yours,

Carolyn R Johnson

Carolyn R. Johnson
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STILL STRIPPING THE LAW ON COAL

A PUBLIC LANDS INSTITUTE REPORT

by

Carolyn R. Johnson
Eric Hildebrandt

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INTRODUCTION

Early in the 1970's, a myriad of problems in the environmental field came to the forefront. They concerned the natural resources on which human life and economic health depend -- air, water, land, and wildlife -- and the threats to them ranging from automobile exhaust to pesticide use to oil spills to coal mining. These problems arose not because of conscious intent to damage the environment but because of failures to anticipate the consequences of actions and to mitigate their effects. Contributing to these failures were insufficient information, failure to heed warning signs, lack of precedent, failure of institutions to take responsibility and make decisions, and the short-term economic benefits of continuing the actions.

A national effort was mounted to respond to the problems and curb the abuses. The Congress passed environmental laws and standards and new agencies were created to enforce them. Scientists and engineers launched research projects to find better predictive tools and ways of protection. Local communities drew up comprehensive land use plans. Individuals conserved, recycled, organized, and participated in environmental decisions. Industries began to clean up and take responsibility for their actions.

One of the most neglected problems that the nation finally confronted in the seventies was the effects of irresponsible coal mining on the people, communities and lands of the coal regions. The horror stories from Appalachia and elsewhere were legion as the coal companies left a trail of devastation and even death in their wake. Many states had attempted to control the abuses but were unable, or unwilling, to regulate the politically powerful coal industry. Moreover, the nation was increasing its reliance on energy from coal, hundreds of new mines were opening across the country, and over one-half million acres of public lands in the western states had been leased for coal mining. Something had to be done, and after several years of concentrated work, the Congress passed the Surface Mining Control and Reclamation Act in 1977.

As with any set of problems and attempted solutions, the passage of time allows a record to be built. And, as with any system, it is essential to periodically review the goals, compare them to the record and assess the performance. We believe this is an appropriate juncture to review the state of affairs in coal mining and to determine whether the inspection and enforcement provisions of the Act have been effective; indeed, to find out what has worked, what needs to be fixed, and what needs to be discontinued.

This study covers the six major coal-producing states in the West, a region whose particular problems have perhaps been overshadowed by the very real mining abuses in Appalachia. In contrast to the East and Midwest, a large part of the West is sparsely populated and people are concentrated in towns and cities, much like oases, in this arid and semi-arid region. The West has poorly developed and highly erodible soils, scarce water resources, unpredictable precipitation, and severe heat, cold, and wind. Thus, much of the West qualifies as a fragile region where mining may cause destruction that cannot be repaired.

In the East and Midwest, many of the destructive impacts of irresponsible mining can be observed within a short period of time -- streams turn orange from acid mine drainage, prime farmlands are stripped away, steep slopes slide down to choke valleys after being stripped of topsoil and vegetation, and highwalls and coal waste dams collapse. The problems are equally severe in the West, but much of the damage may not become apparent for many years -- and may even occur so slowly as to seem to be a naturally occurring change. Nonvisible pollutants enter the streams and groundwater, topsoil washes away, erosion increases, desirable plants fail to grow or cannot reproduce themselves on mined lands, the quality of livestock decreases, and fish and wildlife populations slowly diminish or disappear entirely.

The Act set up a comprehensive system to prevent each of these problems and to address their causes. It identified goals, provided for obtaining information, insured that warning signs would be detected, mandated enforcement, and assigned responsibility. During the course of compiling this study, we found that parts of this system are not being carried out today in the coal fields of the West. We hope this study will contribute to focusing additional attention on the problems while we still have the opportunity to prevent them.

A typical strip mine. Such massive land disturbance makes it essential for mine operators to comply with protective regulations so additional environmental damage can be prevented. (Photo courtesy of Friends of the Earth.)

THE SURFACE MINING CONTROL AND RECLAMATION ACT

Before the Congress passed the Surface Mining Control and Reclamation Act (SMCRA) in 1977, whatever regulation of coal mining took place was up to the individual states. A patchwork of uneven enforcement resulted: some states had no controls, others made half-hearted attempts, and a few began fairly comprehensive programs. In effect, the political and economic power of the coal industry had forced many states to compete for the weakest laws and loosest enforcement at the expense of their citizens' health, property, and environment. The passage of the federal Act after a long and bitter struggle brought major changes to the states, the coal industry, and the citizens in the coal fields. It set minimum standards for state regulatory programs and required all coal mine operators to comply with them.

This chapter describes the principal provisions of the Act with regard to the inspection and enforcement system and the roles of the state and federal government in performing them.

BASIC REQUIREMENTS

After numerous hearings and investigations, the Congress determined that the responsible mine operators had made plans in advance of mining activities so as to prevent problems during mining and achieve successful reclamation after completion; therefore, the Act requires each new and existing mine to obtain a state permit. In order to obtain this permit, the operator must devise a mining and reclamation plan that contains detailed information on several topics:

1. The existing geologic and environmental conditions.

2. The mining methods to be used and a schedule of all mining and reclamation activities.

3. The methods to be used during mining to comply with the Act's performance standards for controling and preventing damage to resources and property and protecting health and safety.

4. The methods to be used for reclaiming the land for productive use after mining has ended.

Once this plan is submitted, it is reviewed by the state regulatory agency and, if the plan demonstrates that all the standards can be met, a permit is granted to mine for up to five years. In order to ensure that the approved plan will be followed and the area properly reclaimed, the operator must post a performance bond to cover these costs. The state agency must conduct monthly inspections to check for compliance with the regulations, the plan, and the permit. If a violation is observed, then an enforcement action must be issued to the operator that specifies the abatement method and a deadline by which the violation must be corrected.

The Congress created a new federal agency, the Office of Surface Mining (OSM) within the Department of the Interior, to be responsible for implementing the Act. Rather than making the Federal agency solely responsible for implementation, the Congress provided for the states to take over the permitting, inspection, and enforcement responsibilities. In order to obtain this authority, a state must have a program that is at least as stringent and contains the same elements as the federal law and regulations. Once OSM has approved a state program, it continues to provide technical and financial assistance to the state, conducts periodic oversight inspections and reviews of all the state's regulatory activities to ensure that the state is properly enforcing its program. OSM is empowered both to take enforcement action if state inspectors fail to cite violations and to take over all or part of any state's program if the state is incapable or unwilling to enforce it.

Throughout the Act, Congress incorporated requirements for allowing citizen participation in each regulatory activity. In fact, the Congress viewed the vigilant and concerned citizen as an essential element in carrying out the purpose of the Act and the state programs. It stated:

> The success or failure of a national coal surface mining regulatory program will depend, to a significant extent, on the role of citizens in the regulatory process. The State or Department of Interior can employ only so many inspectors, only a limited number of inspections can be made on a regular basis and only a limited amount of information can be required in a permit or bond release application or elicited at a hearing. . . . Thus in imposing several provisions which contemplate active citizen involvement, the committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established by the act. (House Report 95-218, 95th Cong., 1st Sess. p. 88).

Therefore, citizens have the right to file complaints and request and attend inspections of mines they believe to be in violation of the law. They can also request hearings on permit applications and reclamation bonds and appeal decisions they believe to violate the standards of the Act or state program.

THE ENFORCEMENT SYSTEM

Typically, the most significant factor that dictates success or failure for a regulatory program is the enforcement of that program. Effective enforcement has made weak laws workable -- without it, even the strongest laws will fail in practice. SMCRA is an excellent example of the interdependence of stringent enforcement and the effectiveness of statutes and regulations. Few pieces of modern legislation have focused so much attention on enforcement powers and, from the start, Congress made its intent clear:

> Efficient enforcement is central to the success for the surface mining control program contemplated by [the Act]. (Id., p. 129.)

The enforcement system in SMCRA is made up of five interlocking components: inspections, enforcement actions, penalties, performance standards, and OSM oversight of state programs. Each component contains requirements for state programs and OSM's oversight activities.

Inspections

Periodic mine inspections to ensure compliance with all regulations and permit conditions are essential to accomplish the Act's objectives. A number of requirements govern inspections, the most important of these are described here:

1. Each mine must be inspected on the average of once per month, and at least four complete and eight partial inspections must be conducted each year. A complete inspection is a review at the mine site of the operator's compliance with all requirements and permit conditions. Partial inspections review compliance with some of the requirements and conditions.

2. The inspections must be conducted on an irregular basis and without advance notice to the operator.

3. The inspector must collect evidence regarding all violations observed.

4. A written report must be prepared promptly on each inspection describing the results and copies must be made available for public review.

Enforcement Actions

Two basic requirements of the enforcement system under SMCRA set it apart from other environmental laws. First, inspectors must take enforcement action on each violation they observe regardless of its magnitude. There is no exception to this requirement, and warnings or recommendations cannot be substituted for formal enforcement actions. Second, the inspector is required to issue the citations immediately at the mine site during the inspection (The Act, Sec. 521). Taking enforcement action without regard to whether the violation is "major," "minor" or has caused environmental harm is essential to fulfilling the Act's purpose to prevent and minimize damage at every step of the mining and reclamation process. While some individual violations may not separately cause damage, their cumulative harm over several years can result in the kinds of long-term destruction that prompted passage of the Act. This consequence was recognized by the Congress, which warned that:

> [I]ndividual disturbances caused by mining might be considered minimal and of small geographic consequence, (but) . . . their cumulative impact could be of long duration and large geographic extent. (House Report 95-218, 95th Congress, 1st Sess. p. 129.)

Another purpose of these provisions is to make the inspector the focus of the enforcement system and to begin abatement of the violation immediately. By focusing on the inspector, a trained professional, the decision to enforce is in the hands of an objective observer who knows the on-the-ground conditions. The Congressional authors of the Act explained that:

> By mandating primary enforcement authority to field inspectors, this bill recognizes that inspectors are in the best position to recognize and control compliance problems. (Id.)

Additionally, when violations are issued during an inspection, political pressure is less likely to influence the decision to enforce.

Upon observing any violation, an inspector must take one of two enforcement actions, depending on the circumstances of the violation:

1. A Notice of Violation (NOV) is authorized if the violation does not cause imminent danger to the health or safety to the public or significant, imminent environmental harm. For example, if the operator failed to replant an area according to the reclamation plan schedule, then an NOV would be issued. In issuing the NOV the inspector also is required to specify the methods for abatement and to set a reasonable time limit for correcting the violation. Only under special circumstances can the limit extend beyond 90 days.

2. A Cessation Order (CO) must be issued in three situations: when a condition or practice presents imminent danger to the health and safety of the public; when a condition or practice causes or has the potential to cause significant imminent environmental harm; and when an operator has failed to abate an NOV within the time limit. As the name implies, a CO shuts down that part of the mining activity where the violation occurred. For example, if an operator were covering topsoil with spoil material, a CO would stop the use of the dragline until the topsoil could be salvaged and the proper procedure followed. Similarly, the improper drainage of water from a mine site could cause large amounts of water to rapidly undercut a road causing a great danger of collapse. This situation would require a CO and immediate correction.

Penalties

SMCRA gives discretion to the states in establishing a penalty system for NOVs, but most western states use a system similar to the following model:

1. After a citation is issued to an operator, a fine is proposed on the basis of four criteria: seriousness, negligence or fault, history of violations, and good faith in abatement. The inspector who cited the violation analyzes the violation on the basis of these criteria and makes a proposed assessment. When the operator has taken extraordinary measures to abate the violation in the shortest possible time ("good faith"), or the points for the other categories are low, then a fine may not be required.

2. This proposed assessment is sent to the operator and must be paid within a time limit. The operator may either accept the proposal and pay the fine or, after paying the proposed penalty to an escrow fund, request an informal assessment conference with the agency to present arguments as to why the penalty is too high or the violation did not occur.

3. Both the operator and the inspector make presentations at the conference, and the conference officer, usually an administrative employee of the agency, decides on the final amount of the fine or vacates the NOV if a violation did not occur.

4. If the operator is still not satisfied, a formal administrative hearing is held in which a verbatim record is kept of testimony from sworn witnesses. The hearing officer's decision can then be appealed to the courts.

Fines may have little effect on those operators who ignore the regulations, and SMCRA provides two other potentially effective penalties for chronic violators: closing their mines and criminal prosecution. If an operator has a pattern of violations, an order is issued for the operator to show cause why the permit to mine should not be suspended or revoked. A pattern exists if an operator has received NOVs or COs for violations of the same or related requirements during three or more inspections within any 12-month period and he is found to have intentionally caused the violations or failed to prevent them due to indifference, lack of diligence, or carelessness. The operator may request a public hearing on the order and the agency's final decision must be in writing.

Chronic violators also risk criminal prosecution and, if convicted, up to one year in prison and a fine of $10,000. Most importantly, these provisions apply equally to individuals and to corporate officers, directors, and agents so that they cannot escape their responsibilities by hiding behind the name of the corporation.

Performance Standards

The Act sets a number of minimum performance standards that operators must comply with during their daily mining activities and must be included in the the state programs. Such specificity was essential, Congress believed, to ensure that methods known to minimize mining damage and successfully reclaim disturbed areas would be used. It is these standards, as well as the mine plan and any additional permit conditions, that inspectors use to review the mines for compliance. This section will describe a few of the most important standards and their significance. Because some regulations recently changed, this discussion focuses on the requirements as applied in 1982, the primary study period.

Topsoil

Before construction of mine pits or entries, roads, facilities, and other activities that disturb the land surface, topsoil must be removed and either placed immediately on another disturbed area that has been prepared for replanting or stockpiled for later respreading. Topsoil is the term used for the layer of earth on which plants can grow. Topsoil stockpiles must be marked with a sign and protected from wind and water erosion, contamination, and disturbance by machinery and mining activities. The stockpiles must be planted so vegetation will hold the pile in place, prevent erosion, and keep the soil microorganisms alive. In the western states, topsoil removal and protection is particularly important for returning the land to productive use after mining because the severe climate, short growing season, and low precipitation mining make reclamation difficult even when extreme care is taken. Without topsoil, reclamation in most areas would be impossible.

However, in a few areas the topsoil has such a high salt content that other suitable material from a lower level must be saved, stored, and respread.

Water Protection and Sediment Control

Before passage of the Act, irresponsible mining practices had caused serious and long-term damage to water resources in the coal fields; these included floods that took lives and destroyed property, wells that dried up, and streams and aquifers that became too polluted for human and animal use. As a result, the Congress devoted more attention to devising protective standards for water than for any other resource affected by mining.

Surface mining strips off the plant cover that holds soils together and protects the land from erosion and keeps the streams from carrying excessive amounts of sediment. Excessive sediment in streams kills fish and vegetation and adds high concentrations of salts or minerals, such as iron. These pollutants can make the water unusable for consumption by people and animals or raising crops. Sediment deposited along stream banks may sometimes result in minimal immediate damage, but:

> [B]ecause channels have narrowed and become shallower, the next rainstorm may cause floods and sweep sediment into fields or public recreation areas. (Daniel Wiener, Reclaiming the West, 1980, p. 70).

SMCRA requires that the amount of sediment leaving the mine permit area be controlled "to the extent possible using the best technology currently available" (Sec. 515(b)(10)(B)). This strict Congressional mandate is reflected in the OSM regulations -- and the state programs -- which require that all surface drainage from the area disturbed by mining be passed through a sedimentation pond. Such ponds allow the sediment to settle out and the water quality to be checked before surface drainage is released to flow off the permit area. An exception can be granted if the disturbed area is very small or the operator demonstrates that the water quality will meet the standards.

Additional sediment control measures include keeping water runoff from the area disturbed by mining separate from that flowing off the surrounding undisturbed areas, installing culverts where roads cross water courses, and protecting ditches and pond outlets from additional erosion by using riprap or lining material. Straw dikes and check dams are used to slow the water's velocity and thereby reduce erosion and decrease sediment. Earthen berms are built to control and contain water and potentially toxic materials from contaminating streams. For example, a berm would be placed along a road ditch to ensure that a big rainstorm would not cause the ditch to overflow and the road to erode. A berm would also be placed around a fuel tank storage area to contain any leaks or spills.

The prevention of sedimentation and the protection of water quality not only requires the construction of structures -- such as sedimentation ponds, ditches, culverts, and berms -- but also requires the mine operator to keep these structures in good repair so they can provide the intended protection. Sediment must be cleaned out of ponds, debris removed from ditches, berms realigned, and culverts cleared of sediment and debris as a regular part of the mining operation. The regulations also set specific design standards for these structures. For example, water diversion ditches and sedimentation ponds must be able to handle the largest amount of water that would result from a 10-year storm.

Erosion

To prevent sedimentation, it is necessary to prevent erosion both on and off the mine site. Increased erosion not only damages the land surface but, once started, it can trigger a cycle of accelerated erosion and sedimentation that interferes with the long-term reclamation of the mined lands and destroys lands off the mine site. In addition, erosional cycles also present a danger to ground water resources in the west. The Congress described this process as:

> Deepening of the (drainage) channel often results in lowering the ground-water levels since streams maintain the equilibrium of ground-water systems . . . . The lowering of ground-water in the arid and semiarid areas could result in a reduction in the vegetative cover which in turn could trigger greater erosion from the landscape during rainstorms. Thus the cycle of increased runoff and erosion, channel deepening, and additional lowering of ground-water is started and continued. (House Report 95-218 at 116.)

Although some erosion occurs on all land, visible or suddenly increased erosion on mined or nearby lands is evidence that the landscape is out of balance and is in the process of establishing a new equilibrium. The land may have been regraded incorrectly or at too steep an angle, the topsoil incorrectly placed, or water runoff poorly managed. Prevention of erosion is a key requirement of all state reclamation programs, and in 1982, OSM specifically required that when rills or gullies were more than 9 inches deep on regraded, topsoiled or revegetated areas, the operator was required to fill, and stabilize, and replant the area.

Signs and Markers

Operators are required to post warning signals for blasting, erect a mine identification sign, and mark the perimeter boundaries, stream buffer zones, and topsoil storage piles. Proper signs are needed to inform the public about the mine name and location, protect areas outside the permit boundary from disturbance, alert employees to blasting conditions, and prevent equipment operators from inadvertently disturbing topsoil piles and stream areas.

Other Standards

Many other regulations set specific standards for reclamation, the proper handling of toxic wastes, the construction and maintenance of roads, the protection of streams and groundwater, and the prevention of damage to private and public property. In addition, special standards must be complied with to protect lands that are particularly vulnerable to damage from coal mining, such as alluvial valley floors in the West and prime farmlands.

Oversight

The Congress believed that one of the major tasks of the federal regulatory program was to ensure that the states carried out their approved programs. To achieve that goal, OSM provides technical assistance and grants to the states, evaluates the performances of the state regulatory agencies, and sends an annual report to Congress. OSM must conduct periodic inspections and review all the regulatory activities of the states. If a violation is found, OSM issues a Ten-day Notice to the state regulatory agency and the state has ten days in which to inspect the mine and either issue an NOV or explain why the activity does not violate the provisions of the state's program. If the state does not respond satisfactorily, OSM is required to issue an NOV. If a CO is justified, the OSM inspector immediately issues a CO and does not use the Ten-day Notice.

In addition to conducting inspections and taking enforcement actions, OSM also reviews and evaluates each state's performance on inspections, enforcement, penalties, permit applications, and other components of the state program. The results of this review are reported to Congress and form the basis for requiring corrective actions by the states. If the review shows that a state has performed poorly, a public hearing is held to determine if all or part of the state's authority to run its program should be withdrawn, and OSM's authority substituted.

COLORADO

BACKGROUND

Colorado made several attempts to regulate coal mining before the passage of the Surface Mining Control and Reclamation Act (SMCRA), but those programs lacked comprehensive standards and enforcement provisions and were severely underfunded and understaffed. As a result, some mines did not file mining and reclamation plans, obtain permits, and post reclamation bonds, and enforcement was virtually non-existent. A number of mines were abandoned without achieving satisfactory reclamation and many existing mines lacked effective controls to protect water resources and prevent safety hazards.

After the passage of SMCRA, the state legislature enacted the Surface Coal Mining Reclamation Act, the Colorado Mined Land Reclamation Board adopted new regulations, and OSM approved the state's program in December of 1980. The Mined Land Reclamation Division (MLRD) of the Department of Natural Resources administers this program under the review of the seven-member Mined Land Reclamation Board. By law, five members are appointed by the Governor to represent mining, conservation, and agriculture interests, and two members represent the Department and the Soil Conservation Board. In 1982, the total cost of Colorado's program was about $871,000, of which 83 percent was obtained from OSM.

Coal mining takes place in six coal fields located in the eastern plains and foothills, the central mountain valleys, and the western plateau region. In 1982, 43 mines produced 18.5 million tons, 63 percent of which came from strip mines. Most of the coal was burned in power plants and some was used in steel mills. Of the 43 active and 7 inactive mines, 18 were selected as a sample for intensive review of the 1982 inspection and enforcement records. These are the Allen, Bear, Canadian Strip, Colowyo, Eagle 5 & 9, Edna, GEC, Hawks Nest, McClane, Maxwell, Newlin Creek, Nucla, Seneca II, Snowmass, Somerset, Tomahawk, Trapper, and Twin Pines mines.

INSPECTIONS

Frequency

In 1982, MLRD conducted 46 complete inspections at the sample mines, or 61 percent of those required. Only two of the 18 mines received the four required complete inspections and nine mines received two or less. However, MLRD's performance in conducting partial inspections was considerably better, and it conducted 142, or 94 percent of those required.

According to MLRD administrators, more effective scheduling would enable MLRD to conduct a greater number of complete inspections with its present staff. During the first three months of 1983, MLRD conducted 100 percent of the required inspections, but it is evident that more inspectors are needed to consistently conduct the amount of inspections required by the state's approved program; however, MLRD is currently at its personnel ceiling and is not authorized by the state legislature to hire any additional inspectors.

Completeness

Inspection reports filed by MLRD in 1982 consisted of five standard sections: General Comments; Compliance; Problems, Recommendations, and Compliance Dates; Status of Problem Resolution; and Summary. The section on Compliance, in which inspectors list the particular regulations examined during the inspection and identify the enforcement actions taken, generally includes a narrative description of the operator's compliance with the regulations regarding roads, hydrologic balance, topsoil, signs and markers, and other regulations applicable to the mine. In section III, entitled "Problems, Recommendations and Compliance Dates," MLRD inspectors often set deadlines for operators to fix uncited violations, as well as problems, that have not yet become violations. The fourth section, entitled "Status of Problem Resolution," identifies problems and violations so they can be reviewed on future inspections. Section IV serves as an informal tracking system for both problems and violations and inspectors use it to note when problems and violations are abated, as well as when operators do not meet MLRD deadlines.

The inspection report form used by MLRD clearly states which regulations were checked during each inspection, but it does not indicate which areas of the mine were inspected. Thus, although many inspections appeared to be thorough, the reports provided no documentation that the inspector did indeed review all areas and facilities for compliance.

Review of inspection reports indicates that there were two additional problems with the quality of inspections. First, MLRD inspectors did not check for compliance with all applicable regulations during some "complete" inspections. For example, one report for a "complete" inspection stated:

> The berm along the Purgatory [River] between the bridge and pond #6 was not checked during this inspection. *Compliance deadline was January 18, 1982.* (MLRD, Maxwell, 1/19/82; emphasis in original.)

Second, the reports indicate that Colorado inspectors rarely took samples and measurements to check the operator's compliance with essential regulations and permit conditions that cannot be confirmed visually or without special equipment. These checks include, among others: collecting water samples for on-site and laboratory analyses of water quality; collecting soil and overburden samples for analysis to determine whether the nature and quality of the materials is appropriate for the intended uses; measuring regraded slopes to determine if the approximate original contour and permit requirements are being achieved; and measuring topsoil to determine whether the proper amount is removed and replaced.

In interviews, MLRD administrators said such checks were seldom made because inspectors had not been trained in these techniques. They also stated that at their request the Office of Surface Mining had sponsored a workshop in water sampling for MLRD employees in 1983.

In sum, both the low number of complete inspections conducted in 1982 and the quality of those partial and complete inspections that were conducted indicates that the compliance status of many mines was not thoroughly and consistently reviewed during that year.

Unannounced Inspections

In reviewing Colorado's inspection program, there were several indications that some operators may have been notified in advance of some inspections. For example, at an informal assessment conference on September 9, 1983 both the inspector and one of the employees of the Colorado Yampa Coal Company stated that the inspector had called the day before the inspection to say she was coming to inspect.*

An employee of another company's employee told the authors that MLRD inspectors usually notified him in advance of an inspection if they wanted to go underground. This was done to ensure that an employee who was legally certified to go underground would be available to accompany the MLRD inspector.** The employee also stated that since early 1983 an inspector had used the company's telephone to notify a nearby operator when the inspector would arrive at his mine. The employee stated that this notification was made regardless of whether the inspector visited the underground portion of the mine.

In addition, one inspection report stated:

> This was a partial inspection of the mine site. Unfortunately, the operator could not be contacted before inspection. (MLRD, Twin Pines, 7/9/82.)

The incidents described above do not represent conclusive proof that some operators have been notified in advance of some inspections. Because Colorado inspectors also perform permit reviews, it is possible that confusion exists as to which hat staff members were wearing at certain times.*** Announcement of inspections is a very serious violation of the law, however, and the situation deserves further investigation. Certain steps may need to be taken to clarify inspection procedures and ensure that inspections are indeed unannounced:

1. On-site meetings with operators regarding permit reviews and other issues should be scheduled on days when an inspection is not being conducted.

2. Inspections of underground facilities should be unannounced. Unless the inspector arrives during a major mine disaster, every mine has a number of personnel qualified to accompany the state inspector underground.

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*This telephone call was discussed at some length in the conference because the conference officer asked why the company representative had not told the inspector about the violation the conversation. (See also the discussion in the "Warnings" section below.) The violation occurred because topsoil had been stockpiled in an area not authorized in the approved mining plan.

**All persons entering an underground mine must have undergone approved training and been certified by the U.S. Mine Health and Safety Administration or be accompanied by a person who has.

***Colorado inspectors were not allowed to attend the personal interviews scheduled with the authors and, thus, additional information could not be obtained about the inspectors' practices.

3. An inspector will not accommodate an operator's preference for a specified mine employee to accompany the inspector if, in order to respect that wish, the inspector would be required to delay the inspection or give advance notice so the employee could be available.

4. The procedures to be followed if the inspector is denied entrance for "safety reasons."

ENFORCEMENT

Violations

Of the 184 violations described in the 1982 inspection reports for the 18 sample mines, 25 Notices of Violation (NOVs) were issued in accordance with the state's approved program (CCR 5.03.2(1)(2)(3)). No Cessation Orders (COs) were issued at the 18 mines in 1982 and no proceedings were conducted on patterns of violation. Thus, enforcement actions were taken for less than 14 percent of the violations observed by MLRD. (See Table 1.)

Eighty, or 50 percent, of the uncited violations described in MLRD inspection reports involved failure to construct or adequately maintain sediment and erosion control structures, including ditches, culverts, berms and sediment ponds. About 15 percent, or 24, of the uncited violations included failures to post permit and boundary signs, failure to follow mine plans, and failure to obtain emission permits, and certifications and approvals for facility construction, as required. Fifteen, or about 10 percent, of the uncited violations were related to the failure to salvage, store, or mark topsoil. The remaining 25 percent concerned violations of miscellaneous requirements.

Several situations occurred at the sample mines for which COs should have been issued pursuant to Colorado's approved program, which requires COs to be issued under any one of three conditions: (1) if mining practices create imminent danger to public safety, or (2) cause or will likely cause significant environmental harm, or (3) if an operator fails to abate a violation within the deadline established in an NOV (CCR # 5.03.2(1)(a) and (3)). At the Hawk's Nest mine, for example, an inspector noted that:

> [T]he operator has stockpiled coal within five feet of Highway 133. Consequently, the stockpile is sloughing onto the highway and poses a threat to the health and safety of the public and may cause off-site damages. (Hawk's Nest, 2/25-26/82.)

In other cases, abatement deadlines contained in NOVs were not met but COs were not issued as required. For example, the abatement requirements of NOV 81-45 required the Hawk's Nest operator to reclaim a temporary haul road by November 1, 1982 in order to prevent erosion. By a letter dated on November 17 -- over two weeks after the deadline had passed -- the operator requested an extension of this deadline because, he alleged, he could not obtain sediment from a nearby reservoir for use as topsoil in the reclamation work due to weather conditions. MLRD did not grant the extension but stated that if sediment from the reservoir could not be obtained:

> [B]ackfilling and final grading should be completed as specified in the violation abatement plan, and the exposed backfill should be seeded and mulched to provide temporary erosion stabilization . . . If our inspector verifies that final reclamation as outlined in [the reclamation plan] has not been accomplished, an NOV will be issued for failure to operate in compliance with the approved plan. (Letter from Dan Mathews, MLRD, to Jack Cushing, Northwest Pipeline Corp., Nov. 29, 1982.)

When an inspector visited the mine eleven days later on December 9, the operator indicated that reclamation was not completed as required. However, the inspector took no enforcement action and reported that:

> [T]he status of the haul road reclamation was not assessed during this inspection . . . [the operator] has responded to this issue in a letter of November 17, 1982. The resolution of this problem will be handled separately from this report by Dan Mathews. (MLRD, Hawk's Nest, 12/9/82.) (Also see MLRD, Hawk's Nest 5/20/82.)

Although the inspector apparently was unaware that MLRD had refused to grant the extension and had told the operator that an NOV would be issued if an inspector found that the road was not reclaimed as required, MLRD apparently never corrected this oversight. While a CO was the legally

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TABLE 1. The Violations Observed and Enforcement Actions Taken at the Colorado Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATIONS
Allen	17	3	0	2	0
Bear	7	4	0	4	0
Canadian Strip	13	3	0	0	0
Colowyo	3	0	0	0	0
Eagle	34	5	0	1	0
Edna	4	0	0	0	0
GEC Strip	11	0	0	0	0
Hawk's Nest	27	4	0	0	0
McClane	7	0	0	0	0
Maxwell	18	2	0	1	0
Newlin Creek	11	2	0	1	0
Nucla	0	0	0	0	0
Seneca	9	0	0	0	0
Snowmass	12	1	0	0	0
Somerset	1	0	0	0	0
Tomahawk	6	0	0	0	0
Trapper	2	0	0	0	0
Twin Pines	2	1	0	0	0
TOTAL	184	25	0	9	0

required response -- not an NOV -- no enforcement action was taken in response to the operator's failure to reclaim the road before winter, when snow conditions usually prevent grading and seeding before the spring growing season.

Prevention of Environmental Impacts

Design and maintenance requirements were included in federal and state regulations in order to prevent adverse impacts from occurring. Failure to construct and maintain sediment and erosion control systems as required, for example, can have significant adverse effects on hydrology and reclamation, due to a high level of cumulative effects. Even the damage caused by one sudden major rainstorm can be difficult to correct. Continual maintenance of diversions and ditches is necessary year round to prevent harmful hydrologic impacts because precipitation is unpredictable and many repairs may be difficult to make during the winter if the ground is frozen or a snow cover exists.

Although Colorado's approved program is intended to prevent environmental impacts before they occur, review of MLRD records indicates that the Division's enforcement philosophy is one of issuing citations after harm has occurred, not before. In many of the inspection reports reviewed by the authors, MLRD inspectors had explained that although they found that operators had not complied with regulations, citations were not issued because environmental damage had not yet occurred. For example, when an inspection of the Eagle mine on October 26, 1982 revealed a number of violations, including diversions which were breached and areas that lacked positive drainage, the report stated that:

> This month's inspection revealed a number of problems dealing with drainage and sediment control. A number of these problems are minor in nature but need to be corrected now so that performance standards are not violated next spring during snowmelt. At present, these problems deal with design requirements that may not be as critical this time of year. No violation of performance standards with environmental or reclamation concerns were noted. For these reasons, no enforcement action was taken. (Also see Hawk's Nest, 12/9/82.)

A large number of uncited violations were caused by the operator's failure to perform diligent maintenance. Many operators did not take responsibility for maintenance and appeared to wait and see if the MLRD inspectors would catch them. For example, in the report for the October 26, 1982 inspection of the Eagle mine, an inspector noted several violations, including erosion at the inlet and outlet of two sediment ponds, non-coal waste deposited along the Williams Fork River, and the absence of a mine sign and boundary markers. The inspector took no enforcement action and merely warned that:

> In the future the operator should pay more attention to maintenance and should not rely on the Mined Land Reclamation Division to identify problems. (Eagle, 10/26/82.)

In another case, an operator failed to seed an area being reclaimed by the required date. The inspector's response was to threaten to issue an NOV if the reclamation proved unsuccessful.

> Establishment of a vegetative stand may still be feasible, but the potential is not high, given the clayey soils and steep, south facing exposures of the mine site. Should the operator fail to achieve successful establishment of a vegetative stand and environmental damage occurs as a result of the late seeding, a notice of violation will be issued. (MLRD, Hawk's Nest, 5/20/82)

Colorado's regulations, as well as the federal regulations, require prompt seeding of areas to be reclaimed in order to minimize erosion and sedimentation and to return the mined land to other productive uses as soon as possible (CCR 4.15.1-4). Failure to meet seeding deadlines is a violation, and it is also highly likely that late seeding, as described above, would ultimately result in some degree of additional erosion and sedimentation, delayed final reclamation, and, possibly, final reclamation of lower quality. However, the 1983 inspection reports for this mine contained no information indicating that the effects of late-seeding were reviewed by MLRD during the next growing season. No enforcement action was taken on the initial failure to seed the area and subsequent inspection reports did not indicate whether or not plants were established.

Warnings

Instead of taking enforcement action on all observed violations, MLRD frequently issued unenforceable warnings to operators, instructing them to abate violations by a "compliance date" specified in the inspection report. Most of the warnings were issued in Section III of the Division's standard inspection report forms,* which states:

> The operator is advised that the following problems have been identified during inspection and that failure to correct the problems may result in the Division taking an ENFORCEMENT ACTION . . . .

From the record, it is clear that warnings were often issued as substitutes for the enforcement action required. In one case when an operator failed to relocate topsoil, which had been placed immediately adjacent to a diversion ditch, and remove rock obstructing the ditch before the deadline set by MLRD, the inspector issued the following warning to the operator:

> The Division strongly reminds the operator to contact the Division if it does not appear our deadlines will be met. The deadlines are imposed (as opposed to violations) as a courtesy to the operator for certain 'non-critical' maintenance items. However, failure to meet these deadlines may result in enforcement action unless a request for an extension has been received by the Division. (Hawk's Nest, 11/30-12/1/82; emphasis added.)

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*It should be noted that not all warnings issued in Section III concerned violations, nor were they counted as such in this report, and that some violations described elsewhere in inspection reports were not the subject of warnings issued in Section III.

This example also makes clear that the Division expects the operator to warn the Division that a problem has occurred or a deadline missed before the next inspection. Apparently, if the operators forewarn the Division, they reduce their chances of receiving NOVs. In an interview, David Shelton, Director of MLRD, stated:

> [We] encourage operators to call with problems. If they do call, an NOV probably won't be issued. We want to solve problems quickly. [We] don't always have to issue a violation if the problem is getting resolved as quickly as it would with an NOV.

Mr. Shelton explained that when a problem and compliance deadline are noted in an inspection report:

> They are not intended to be simply warnings. We are saying 'fix it.' If it is a clear violation, the Division will take enforcement action if it is not abated.

According to Fred Banta, Coal Supervisor, the warnings issued by MLRD result in a high level of compliance. Mr. Banta said that an internal review by MLRD indicated that "approximately 75 percent" of the compliance deadlines issued in inspection reports "are met by operators." No copy of this review was retained in Division records, according to Mr. Banta.

The review of inspection reports conducted for this study indicates that operators did respond adequately to some of the warnings, as Mr. Banta indicated. However, opeartors failed to heed a significant number of warnings issued for violations at the sample mines and, when informal "compliance deadlines" were not met, enforcement action was rarely taken at the sample mines, in contrast to the statements by Mr. Shelton that were quoted above. At the 18 sample mines, operators failed to meet at least 22 "compliance deadlines" for 17 violations. Fourteen of the 17 violations were not abated until after the first deadline set by MLRD, two violations were not abated until after the second "compliance deadline" was set, and one operator failed to meet four deadlines issued for one violation.* Although MLRD usually warns operators that enforcement action will be taken if "compliance deadlines" are not met, only one citation (NOV 82-3) was issued for the 22 deadlines with which operators failed to comply at the sample mines. As Table 2 indicates, MLRD's failure to set legally enforceable abatement deadlines by issuing NOVs has resulted in excessive delays in the abatement of some violations.

Inspectors' On-site Enforcement Authority

The authority for inspectors to cite violations at the mine site, if exercised, ensures that abatement of violations begins as soon as possible. It places the decision to take enforcement action in the hands of the inspectors who know the actual site conditions rather than with administrators who have not observed the condition and may be more influenced by political considerations.

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*More than one deadline was issued before some violations were abated; therefore, the number of compliance deadlines exceeds the number of violations cited in the above statistics.

TABLE 2. Delay in Meeting Compliance Deadlines at Three Mines According to Descriptions in Inspection Reports.

EAGLE MINE	HAWK'S NEST MINE	MAXWELL MINE
MLRD Report:	MLRD Report:	MLRD Report:
"The ditch system . . . around the SW portion of the #5 portal area was not cleaned and repaired by Dec. 31, 1981, as required in the November inspection report. The operator is . . . delinquent. The compliance deadline is extended until February 15, 1982. If problems with the deadline are encountered, the Division must be notified before the compliance date." (1/11/82) Ditch system was not repaired. "[P]rogress was hindered by muddy conditions." Deadline extended to June 15, 1982. (3/4/82) Ditch system was not repaired. "An attempt was made by the operator to correct this problem. Two . . . [drainage] pipes were put into the ground . . . ." but, "The inlet of these pipes could not be located. The outlet is several feet off the ground," and "no riprap is in place below the outlets. The operator should correct this problem immediately." (6/30/82) Repair "has not yet been done to satisfaction. This task should be done immediately. If the drainage system . . . isn't rendered functional by Spring of 1982, an enforcement action will be taken." (9/2/82)	Mine yard "must be regraded to eliminate depressions so that runoff . . . drains into the sediment pond, as designed in the mine plan. This problem Has been pointed out in previous inspection reports." (Emphasis added.) (11/81) Regrading of mine yard must be completed by Dec. 15, 1981. (12/11/81) "Positive drainage has not been established at the East mine yard." (2/25-26/82) "The operator was to have completed grading at the east mine yard, so as to have established positive drainage by April 30, 1982. Due to the fact that mining equipment was moved from the unpermitted equipment storage area to the east mine yard, the operator was unable to complete the site grading . . . . The operator should be more diligent in notifying the Division when it is not possible to meet compliance deadlines." (6/18/82)	"More riprap should be placed to cover the entire slope" of an embankment for a water intake pond that had been reconstructed over two months earlier. MLRD required operator to riprap and to seed the entire embankment by May 3rd and 17th, respectively, to protect from erosion and minimize sedimentation. (3/30/82) "No additional riprap has been placed on the [embankment] . . . . [Compliance] deadline extended [to June 30, 1982] at operator's request" due to reducin number of employees at the mine. (5/18/82) Riprap placed on embankment, but seed not planted. Operator asked for an extension of the compliance deadline during the inspection. Deadline extended to July 16, 1982. (7/7/82)
Operator's Action:	Operator's Action:	Operator's Action:
No further mention in subsequent inspection reports. Abatement time at least 276 days (11/30/81-9/2/82).	Mine yard regraded by 7/30/82 inspection. Abatement time at least 230 days. (11/31/81-6/18/82)	Area reseeded by 7/16/82. Total abatement time was 107 days. (3/30--7/16/82)

Only nine of the 25 NOVs issued at the 18 sample mines in 1982, or one-third, were issued on-site during inspections (See Table 1). Enforcement actions were not issued on-site by MLRD inspectors "if there was not the threat of immediate environmental harm that required abatement immediately," according to Mr. Shelton. "When we write a violation, we want to make it right," he said, explaining that inspectors may return to the office to review mine plans and regulations, or consult with other specialists to determine whether or not to issue an NOV. As the descriptions of many violations in the Table 3 indicate, many NOVs were not issued on-site although prompt abatement appeared to be necessary in order to minimize the possibility of environmental harm. In addition, very few of the NOVs concerned complex violations that would require inspectors to return to the MLRD office in Denver to review mine permits or consult with other staff members with specific technical or legal expertise. Therefore, it is apparent that abatement of many violations was significantly and unnecessarily delayed by issues NOVs for violations immediately.

Response to OSM Ten-day Notices

OSM and MLRD have exhibited strong disagreements from 1982 to the present concerning whether or not enforcement actions should be taken for all violations. The state has repeatedly expressed the opinion that many "minor" violations do not deserve formal enforcment actions. As described below, MLRD did not respond promptly to many Ten-day Notices issued by OSM and resisted OSM's efforts to persuade the state to initiate formal enforcement actions throughout 1982. In 1983, OSM began to issue federal NOVs when the state has refused to take formal enforcement action.

Seven situations at the sample mines in Colorado resulted in issuance of Ten-day Notices by OSM. One (82-2-1-1, #2 of 4) was issued for "construction of sediment ponds outside the permit area," but the response by MLRD indicated that the ponds had been previously approved as a technical revision to the permit and were in compliance. A copy of the technical revision had not been sent to the OSM office in Albuquerque; therefore, the issue was resolved correctly by OSM requesting that the state send a copy.

MLRD's response to two of the Ten-day Notices indicated that it conducted inspections and found the violations had been abated; therefore, no further action was taken by OSM. MLRD responded to one Ten-day Notice (82-2-2-1, #3 of 4) by waiting almost two weeks after receiving the notice before inspecting the mine site. MLRD responded to the other Ten-day Notice (82-5-2-1) by calling the operator, who stated that the recommended abatement had been performed. MLRD did not inspect the mine until 11 days after the Ten-day Notice was issued. OSM took no further action on this Notice, apparently because MLRD indicated the violation had been abated. Later, OSM stated that the Division's failure to take enforcement action was inappropriate. (Letter from Robert Hagen to the authors, Sept. 16, 1983.)

MLRD responded to the other four Ten-day Notices (82-2-1-1 #1 and #4 of 4, 82-2-1-2 and 82-2-1-3) by inspecting the Allen and Maxwell mines approximately two weeks after receiving the notices from OSM. MLRD's inspection reports indicated that the violations still existed, but no enforcement action was taken. In all four cases, OSM stated that MLRD's "lack of enforcement action appeared to be in conflict with the Colorado approved program . . ." (Letter from Robert Hagen to David Shelton, Dec. 13, 1982.) OSM reinspected

TABLE 3. Comparison of the Dates When Violations Were Observed and When 16 NOVs Were Issued, Showing the Length of Delay Before Enforcement Action Was Taken and Abatement Begun.

MINE NAME	NOV NO.	DESCRIPTION OF OPERATOR'S VIOLATION	DATE OBSERVED	DATE ISSUED	DELAY (days)
Eagle	4 #1	Topsoil not salvaged.	1-11	1-14	3
	" #2	Approved plan not followed.	1-11	1-14	3
Maxwell	6	Construction could harm the hydrologic balance of the river.	1-19	2-5	17
Bear	8	Pushed contaminated snow on riverbank, causing oil slick in river.	2-25	3-16	19
Eagle	10	Hydrologic balance not protected.	3-4	3-11	7
Hawk's Nest	11	Operator breached berm, allowing runoff from disturbed area to drain into river.	2-26	3-17	19
"	12	Debris placed along river bank in unmarked stream buffer zone.	2-26	3-17	19
"	13	Coal stockpile sloughing on highway.	2-26	3-17	19
"	14	Failure to maintain sediment control system.	2-26	3-17	19
Canadian Strip	15	Construction of unauthorized haulroad.	3-25	3-30	5
Allen	32	Trucks and equipment parked on area where topsoil hadn't been removed.	8-19	9-30	42
Eagle	36	Uncontrolled drainage at coal loadout.	9-30	10-8	8
Newlin Creek	42	Topsoil not salvaged during construction of explosives bunker.	10-25	12-8	44
Twin Pines	44	Topsoil not salvaged during construction of truck turnout.	10-27	11-8	12
Canadian Strip	67	Berm not placed around coal loadout.	11-18	11-26	8
Snowmass	69	Sediment pond below refuse pond not completed by required date.	12-3	12-9	6

AVERAGE DELAY = 21 DAYS

the two mines and found that two of the four violations cited in the Ten-day Notices still existed. Instead of issuing the required NOVs, OSM again attempted to persuade MLRD to take action. A telephone conference was held among MLRD Director David Shelton, OSM Assistant Director William Schmidt in Washington, D.C., and Thomas Ehmett, Inspection Supervisor for the OSM Albuquerque Field Office, and Mr.Shelton agreed that MLRD would reinspect the mines and issue NOVs if the violations still existed (OSM, Maxwell, 10/28/82). Eleven days later MLRD reinspected the mines and issued NOVs for the violations -- approximately ten weeks after receiving the Ten-day Notices from OSM.

Abatement

The state's approved program, like SMCRA, requires prompt abatement of all violations, even if abatement measures delay other mining activities or require additional resources. Colorado regulations specifically require that NOVs fix a "reasonable time, not to exceed 90 days" for abatement, and extensions are allowed only upon the operator's request in writing and a "showing of good cause for such an extension." If the operator fails to abate the violation in the time set by an NOV, a CO must be issued, which "may require, among other things, the use of existing or additional equipment" to abate the violation. (CCR 5.03.2(1)(2)). Review of the records indicates two problems with Colorado's abatement procedures: some abatement periods for NOVs were unreasonably lengthy and environmentally destructive; and numerous informal "compliance deadlines" were extended without good cause.

An example of an unreasonably long abatement period occurred at the Bear mine. NOV 82-37 was issued for pushing contaminated snow onto the river bank and creating an oil slick in the North Fork of the Gunnison River. The inspector allowed the operator 16 days to pull back the snow and abate the violation.

Informal "compliance deadlines" were extended at several mines because the operators were temporarily cutting back operations, and had requested extensions due to limited manpower and equipment at the mine. At the Maxwell mine, for example, the operator failed to adequately riprap and seed the embankment of a water intake pond. Although state regulations require such embankments to be protected from erosion and revegetated "immediately after the embankment is complete," (CCR 4.05.9(4)(5)), these measures were not taken for over four months after the embankment was completed. MLRD warned the operator to add riprap and seed the embankment by May 3 and 17, respectively, but these measures had not been finished by the May 18 inspection. No enforcement action was taken on the violation , and the inspector explained the delay thus:

> Due to the reduction in the number of employees retained at the CF&I mines, the operator has experienced some difficulty meeting compliance deadlines. For this reason, some previously issued compliance deadlines have been extended. (Maxwell, 5/18/82. See also, Maxwell, 1/19/82 and 3/30/82.)

After an inspection indicated that cattle were grazing on the reseeded embankment, the Colorado inspector recommended that the operator submit a plan to MLRD to prohibit grazing on the newly reclaimed areas. A subsequent OSM inspection report explained why this abatement was too lengthy:

> [T]he time required to submit a plan should be a reasonable period . . . for the specific abatement called for in the recommendation. The 47 days [MLRD allowed for the operator to submit the plan] is too long for the formation and submission of a plan on a subject as uncomplicated as grazing. In the 47 days all new growth will have been grazed off the dam. (OSM, Maxwell, 10/28/82.)

Vacated NOVs

Five NOVs, or about 19 percent, of the citations issued by MLRD inspectors at the sample mines were later vacated by MLRD administrators. Only one (NOV 82-67) of the five was vacated because a violation had not occurred. The other four were vacated because they were improperly written or served, or because informal warnings were substituted by Mr. Shelton in place of the formal enforcement actions.

Two NOVs (82-44 and 82-6) were improperly written or served, but MLRD vacated these NOVs rather than reissue or modify the NOVs in order to further pursue the violations. NOV 82-44, issued because an operator failed to salvage topsoil prior to construction of a truck turnout, was vacated because it was not properly served upon the operator. According to Mr. Shelton, it was not reissued because,

> [T]he Division . . . did not feel it was an appropriate use of Division time, money, and resources to pursue a minor violation and questionable issue that had been resolved on-the-ground. (Letter from David Shelton to the authors, Sept. 7, 1983).

In his response to a letter from the authors requesting a clarification of why this NOV was vacated, Mr. Shelton did not explain why the Division felt this was a "questionable issue" and how it was determined that the failure to salvage topsoil "had been resolved on-the-ground." No additional information was found in Division records, and MLRD staff were unavailable for follow-up questions.

NOV 82-6 was issued when the embankment of a structure thought to be a sediment pond (which was actually the embankment of a water inlet pond used to settle sediment out of river water bofore it was used in the mining operation; was reconstructed "in a manner that could be harmful to the hydrologic balance of the river" (Maxwell, 1/19/82). According to the inspection report filed by the inspector who issued the violation, the operator had disturbed a previously undisturbed area without applying for a technical revision to the permit, topsoil was being used to form the embankment, soil material had been pushed into the river, and "the potential for addition of sediment to the river was high due to the somewhat careless construction techniques that were being used or were planned for use" (Id.). The NOV was later vacated when MLRD determined that the structure was a water inlet pond, not a sediment pond, and the material thought to be topsoil was actually sediment trapped from the river. In his letter to the authors, Mr. Shelton explained that the NOV was vacated because the "allegation in the NOV was incorrect," but did not explain why the NOV was not modified or reissued to include only the violations concerning additions of sediment to the river and disturbance of areas not authorized by the approved permit. (Sept. 7, 1983.) MLRD officials were unavailable for follow-up interviews to clarify why no enforcement action was taken.

Two NOVs (82-64 and 82-13) apparently were vacated in connection with informal warnings issued by the MLRD Director. NOV 82-64 was issued to the Newlin Creek mine for failure to follow the approved mine plan after two exploration drill holes were drilled without approval of the Division (Newlin Creek, 1/19/82). The NOV was vacated because "considerable confusion" existed with regard to which company should have applied for approval from the Division. Instead of determining the responsible company and issuing a proper NOV, however, MLRD vacated the NOV. No further enforcement action was taken and the following warning was sent to each company:

> [E]ach company should ensure that the activities it undertakes are permitted under the Coal Program, regardless of the ownership of the land. This means the company undertaking an activity which must be permitted should ensure that is (sic) is so permitted and appropriately bonded. If it is unclear as to who actually did a certain activity we will look to the holder of the permit (if any) for that area. If, however, it is clear that a different coal company from the permit holder undertook the activity we will look to that unpermitted coal operator for a resolution of any possible violation. (David Shelton, Letter of Jan. 26, 1983.)

NOV 82-13 was issued after coal was stockpiled within five feet of State Highway 133 by the Hawk's Nest mine. The inspector noted in his report that "the stockpile is sloughing onto the highway and poses a threat to the health and safety of the public and may cause off-site danger." (Hawk's Nest, 2/25-26/82.) The NOV was vacated on June 8, 1982 by the MLRD Director "with the understanding that prior to stockpiling of coal immediately adjacent to the Highway, Western Slope Carbon will demonstrate that the health and safety of the public is adequately protected." (Civil Penalty Adjustment Justification for NOV 82-13, undated). However, a week after the NOV was vacated, an inspector at the mine wrote:

> On June 15, 1982, it was learned that coal was again being stockpiled at the location. WSC must immediately submit results of stability analyses documenting that the pile does not present a safety hazard and submit a detailed plan for the construction and maintenance (clean out) of a retaining wall as discussed at the assessment conference. (Hawk's Nest, 5/20/82; emphasis in original.)

The high percentage of NOVs issued by state inspectors which were later vacated by the MLRD Director -- although records indicate violations did actually occur -- undoubtedly decreases the impact of the enforcement authority that inspectors were intended to have under SMCRA and Colorado's approved program. Even when violations were cited properly by inspectors, the record indicates that MLRD vacated the NOVs and substituted warnings or recommendations.

PENALTIES

Review of the record indicated that MLRD proposed very low fines and then routinely reduced them during assessment conferences. No use was made of other penalty measures such as show cause orders for patterns of violations at the sample mines. MLRD proposed fines on 19 NOVs for at the sample mines that averaged $939 and levied final fines that averaged $670. Sixteen fines were reduced after assessment conferenes were held. In comparison, the final fines levied by OSM for 50 NOVs in the western states from 1979-81 averaged $1,691, or more than two and one-half times percent greater than the average fine levied by MLRD.

Although the authors were not able to perform a detailed analysis of MLRD's proposed and final assessments, the statistics mentioned and several individual cases indicate that reductions are granted freely during assessment conferences, rather than being reserved for extraordinary circumstances as the law requires. These cases are described in the following section.

Reductions for "Good Faith"

Under the federal Act, "good faith" is one of the four categories used in assessing fines. Colorado's approved program allows penalties to be reduced up to $1,250 for "good faith" if the operator takes "extraordinary measures to abate the violation," and if "abatement was achieved in the shortest possible time." (CCR 5.04.5(2)(d).) Although strict criteria must be met for "good faith" to be awarded, 16 of the 19 fines levied by MLRD for violations at the samples mines were significantly reduced for "good faith".

In addition, fines for several other NOVs were significantly reduced for "good faith" before problems were abated. For example, NOV 82-11 was issued at the Hawk's Nest mine after the operator dug a trench through a containment berm and drained water containing coal fines and a heavy sediment load into the North Fork of the Gunnison River. In order to reach a permanent solution to the drainage problem at the mine yard, the NOV required the operator to regrade the East mine yard. In a March 31, 1982 letter, attorneys for Western Slope Carbon, the operator, stated that "in an attempt to obtain a permanent solution to this water retention problem," the yard would be regraded and that obstacles to abatement -- such as the need to move equipment from the mine yard and muddy, freezing conditions -- "should be eliminated shortly to enable completion of the permanent solution." On May 9, 1982 the initial fine of $2,000 was reduced to $1,200 "as a result of the positive reaction of Western Slope Carbon to stop the [violation] and because of good faith efforts shown by the company to resolve the issues related to [the] violation since the time of the violation." (Assessment Conference Report, NOV 82-11.) However, eleven days after this reduction was made, the May 20 inspection of the Hawk's Nest mine indicated that the violation had still not been abated -- 83 days from the time the violation was first roted. (Hawk's Nest, 5/20/82; see also Hawk's Nesk, 2/25-29/82 and 6/18/82; and Assessment Conference Report for NOV 82-12.)

Double Reductions for Rapid Abatement

When assessing fines, a separate determination must be made for each of four categories and the total comprises the proposed assessment or final fine.

For example, the determination of an operator's degree of fault in causing the violation involves no consideration of the operator's good faith in rapidly abating the violation. MLRD staff did not always perform separate determinations, however, and some fines received double reductions for "good faith." These situations occurred because, in determining the proposed assessments, inspectors set the penalty in other categories at the minimum amount due to "good faith," then at the assessment conference, the conference officer reduced the fine in the "good faith" category.

NOV 82-39 was issued to the Bear mine when a sediment and drainage control system was not completed as designed, creating a danger of "minor flooding in the vicinity of the office and coal stockpile," according to the inspector. (Dan Mathews, File No. C-033-81, Civil Penalty Assessments for NOVs 82-37, 82-38 and 82-39). "The violation occurred because of negligence or indifference," and "operations considerations had taken priority over environmental compliance" during development of the mine (Id.). Despite these statements, the inspector proposed the minimum penalty of $250 for "fault" due to the operator's efforts to rapidly abate the violation after it was issued. After the assessment conference, an additional $150 was subtracted for "good faith." (Letter from David Shelton to William Bear, Dec. 21, 1982.)

In another case, MLRD apparently confused "fault" with "good faith" when assessing the penalty. NOV 82-38 was issued to the Bear mine for destroying streamside vegetation and making steep roadcuts next to a stream during construction of a fence around the permit boundary. In assessing the proposed fine for the violation, the inspector found that the violation occurred because of negligence, but "the minimum penalty of $250 is assessed due to the rapid abatement." (Dan Mathews, Id.) After the assessment conference, however, MLRD Director David Shelton reduced the final fine from $750 to $50, explaining that:

> This reduction of $700 is warranted for two reasons. First, Bear Coal Company responded in a very positive way by rapidly and totally reclaiming the disturbed area of concern. Secondly, Bear Coal Company has, without imposition of this civil penalty, found that it is far more expensive to violate the permit than to comply with it. Many thousands of dollars have been spent by Bear Coal Company in rectifying the problems . . . . Thus, there is no need for a civil penalty in this case other than for the "history" component. (David Shelton, Id.)

* * *

Two additional points need to be made about Colorado's penalty process. First, many files did not contain information on when violations were completely abated. Therefore, it was difficult for the authors to trace the history of each NOV from the time it was issued to the final penalty decision and verify the reasons given for the decision. Second, Colorado, like all the states in this study, has no system for training its personnel in the proper use of its penalty tools. Without training, it is obviously difficult to use any kind of regulatory tool.

THE HAWK'S NEST MINE -- A CASE STUDY

The compliance history of this mine illustrates most of the points made in the previous sections and also exemplifies many of the problems the enforcement system was designed to prevent and correct.

Hawk's Nest is an underground mine located immediately adjacent to the North Fork of the Gunnison River. It is owned and operated by Western Slope Carbon, a subsidiary of Northwest Pipeline. Downstream from the mine lies a productive agricultural area of fruit orchards, farms, and ranches that rely on the river's water supplies. Since passage of the federal Act, in 1977, numerous violations have apparently occurred at the mine, many of which concerned failure to protect water quality. For example, in late 1977, one of the authors observed the mine dumping truckloads of coal waste into the flood plain of the river at two different locations.

Moreover, the Hawk's Nest mine is only one of six mines in the watershed, and violations also occurred which contribute to degradation of water quality at two other mines along the River that were included in the sample mines used for this study. For example, 1982 inspection reports for the Bear mine noted violations which included disturbed surface drainage flowing directly into the river (2/25/82); contaminated snow being pushed over berms and onto the river bank, creating an oil slick in the river (2/25/82); and disturbance of a stream buffer zone, when dirt and boulders were pushed down a slope and off the permit area (10/19-24/82). At the Somerset mine, material containing coal fines was also pushed on top of a berm above Elk Creek, a tributary of the North Fork; no enforcement action was taken by MLRD (4/23/82).

Additional contributions of sediment or other pollutants to the North Fork River from mining activities can have serious environmental impacts, due to the already high level of some metals in the river. The Colorado Water Quality Standard for iron was set at 1.6 milligrams per liter* for the river downstream from the Hawk's Nest, Blue Ribbon, Bear, Somerset, and Mt. Gunnison mines, but the U.S. Environmental Protection Agency (EPA) recommends 1.0 milligram per liter as the maximum level of iron which is generally safe for aquatic life.** The state standard, set by the Colorado Water Quality Division, significantly exceeds EPA's recommended standard because the "ambient" level of iron in the river*** is already higher than the EPA level. Therefore, additional contributions of sediment from mining activities could increase the amount of metals to levels that are detrimental to irrigated crops and aquatic life. Protecting water quality in the North Fork is also especially critical to the success of the Colorado Division of Wildlife's effort to restock sections of the upper North Fork and reestablish the river as a trout stream. (Personal Commun., Cathy Craig, Wildlife Commission Officer, Colo. Div. of Wildlife, Oct. 9, 1983.)

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*Personal commun., Dennis Anderson, Colo. Div. of Water Quality, Dec. 22, 1983.

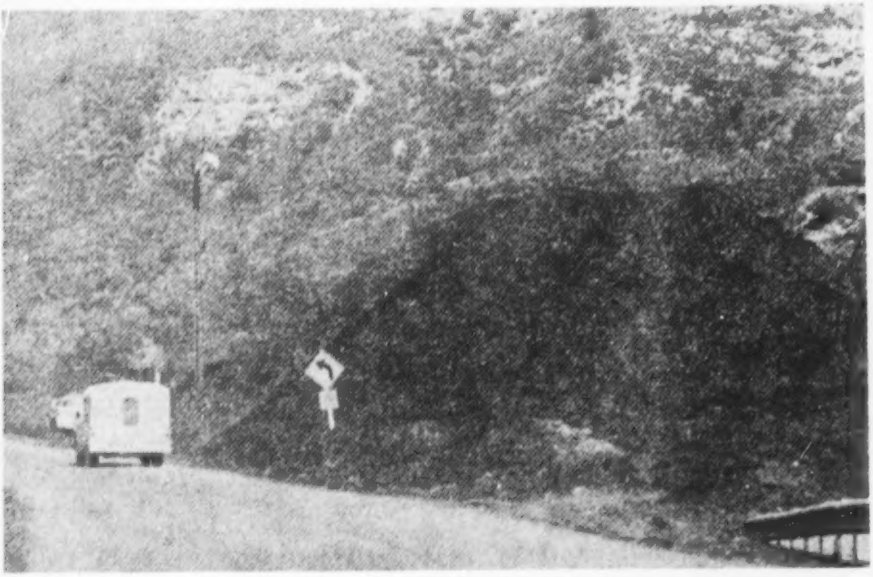
**U.S. Environmental Protection Agency, "Quality Criteria for Water," July 1976, pp. 7881.

***"Ambient" levels means the natural level plus man-made contributions that could not be eliminated in 20 years.

In addition to numerous failures to protect water quality, Hawk's Nest spilled coal on the highway adjacent to the mine, creating a significant safety hazard and nuisance to the public users of the road. Numerous residents of nearby communities complained about the accumulation of coal on the highway next to the Hawk's Nest mine, according to Marty Cook, editor of the North Fork Times in Paonia, Colorado. The authors interviewed Mark Welsh, a resident of the area from 1975 to 1982 and currently the Mining Project Director for the Colorado Open Space Council in Denver. He described the safety hazard created by stockpiling coal immediately adjacent to the highway:

> Potholes in the road were filled with water that was blackened by coal and were invisible to motorists. When cars drove past the stockpile, a mixture of water and coal fines was splashed over the front windshields of motorists. I couldn't see a thing because my windshield was completely black with coal. There was no place to pull over quickly because the coal stockpile came up to the road's edge, and I had to drive on in heavy traffic with my head out the window in order to find a place to pull off. I saw several other drivers who also had to stop to clean the coal fines off their windshields. This was not a one time occurrence. Whenever you approached Hawk's Nest, you always prayed you didn't meet a driver blinded at the same time you were.

Although this situation probably should have received a CO, MLRD issued an NOV and later vacated it. (NOV 82-13.)



Photograph showing the Hawk's Nest coal storage pile next to State Highway 133. Note that the coal extends over the shoulder onto the road. Photo courtesy of Colorado Open Space Council.

The violations described in Table 4 indicate that the operator has failed repeatedly to prevent problems from occurring in daily mining operations, but MLRD primarily confined its actions on the violations to observation, description, and recommendation. It issued only four NOVs and of those, it vacated one and assessed fines totaling a mere $2,000 for the other three.

Colorado's regulations contain several provisions designed to prevent related violations from occurring. These provisions include increased fines for an operator's history of violations; issuance of COs when an operator fails to abate a violation as required by an NOV; and, if three significant or related violations occur at a mine within any 12-month period, proceedings are held to determine if the operator's mining permit should be revoked. Despite the chronic violations degrading water quality which occurred at the Hawk's Nest mine, MLRD used none of these enforcement tools to prevent additional violations. In addition, failing to cite most of the violations described in Table 4 or to levy significant fines when NOVs were issued, MLRD provided no impetus for mine personnel to prevent additional violations from occurring.

TABLE 4. A History of Some Violations during 1981-82 at the Hawk's Nest Mine That Degraded Water Quality.

1. "Water from the mine was being pumped into the East sediment pond and discharged into the North Fork [River]. This water was quite discolored and did not appear to meet NPDES requirements. [The operator] explained that this was due to a breakdown in the wash plant water system, and the pumping was necessary to alleviate flooding . . ." (2/21/81)

2. The inspector instructed the operator to "[C]lean up the coal that was dumped over the outslope of the East mine [onto the river bank]." (3/18/81)

3. "Major concerns with respect to the impact of mining operations on the hydrologic balance [of the North Fork River] . . . include a number of emergency discharges from the warehouse sediment pond and the continuing problem of seepage from the same pond. Bentonite has been placed in the pond . . . but . . . has failed to prevent seepage into the river . . . . The area available for storing the fine [coal waste] slurry is rapidly becoming filled up. This situation has led to . . . pumping of contaminated water into the sediment pond and discharges into the river." (4/30/81)

4. "A small amount of coal refuse was dumped over the outslope of the East mine yard. This should be cleaned up as soon as possible . . . . There are noticeable signs of seepage at the warehouse sediment pond. This pond must be sealed by July 1, 1981." (5/27/81)

5. "A serious problem was identified at the East mine. The culvert which passes run-off water under the highway . . . empties directly into the North Fork, with no sediment control above or below the culvert. . . . The ditch along the highway, on both sides of the culvert inlet, has accumulated a large amount of sediment, with coal fines a major constituent. The coal fines get blown or washed into the ditch from coal trucks along the highway and from the conveyor which passes over the highway. . . . At the culvert outlet, coal fines are visible along the 20

TABLE 4.--Continued.

to 30 foot channel between the end of the culvert and the river bank. Coal fines are also present for a considerable distance downstream from the discharge point, along the bank of the North Fork." (8/25/81)

6. "The problem of overloaded haul trucks losing coal [which was eventually washed into the North Fork because of poor sediment control] continues." (12/11/81)

7. Coal [is] stockpiled on highway right-of-way and coal fines [are] being spilled from conveyor. (1/18/82)

8. "The operator had dug a trench in the berm that retained water . . . water [containing coal fines and sediment] was flowing through the trench and directly into the North Fork." (NOV 82-11 was issued; the proposed fine of $2,000 was reduced to $1,200 because of operator's "positive reaction. . . to stop discharge.") Debris "is deposited outside of bermed areas, along the river bank and, in some cases, ends up in the river." (NOV 82-12 was issued; operator was fined $400.) (2/25-26/82)

9. "The operator has stockpiled coal within five feet of Highway 133 [and] . . . the stockpile is sloughing onto the highway and poses a threat to the health and safety of the public and may cause off-site damages." (NOV 82-13 was issued and later vacated.) (2/25-26/82)

10. "The operator has not addressed the long-term need for the removal or prevention of coal accumulation on the highway as a result of both truck spillage and spillage from the conveyor." (2/25-26/82)

11. "NOV 82-14 was vacated with the understanding that prior to the stockpiling of coal, immediately adjacent to the highway, operator] would demonstrate that the health and safety of the public is adequately protected. [However] coal was again being stockpiled [by the highway without the operator demonstrating to MLRD that the pile did not present a safety hazard.]" (5/20/82)

12. "An oil film was again apparent on the water in the east mine pond. . . . In two locations oil had apparently been drained from machinery directly into the ditch . . . such incidents are completely preventable, and contribute to accumulations of oil in . . . the North Fork when water is discharged." (5/20/82)

13. Additional violations of water protection rules that were noted at the mine during the rest of 1982 included additional coal spillage on the highway and into drainage ditches from the stockpile and conveyors (6/30/82 and 9/21/82); additional disposal of trash and debris in improper areas where it obstructed the sediment control system and could be washed into the river (6/30/82); dumping of coal waste material in sediment control ditches (8/17/82) and 10/20-21/82); and failure to maintain the screen fabric fences used to trap sediment and coal fines in water. (6/18/82)

SUMMARY

Review of the MLRD records indicates that large parts of Colorado's inspection and enforcement program did not function properly. Serious deficiencies existed in the number and quality of inspections performed by MLRD and the failure to take enforcement action on violations. The Division relied largely on informal and ineffective warnings to violators that often delayed abatement of violations. When enforcement actions were taken, fines were routinely reduced during the assessment process for rapid compliance, and some fines were reduced when violations had not been promptly or completely abated. The Division made no use of most enforcement tools to deter chronic or serious violations at the sample mines, such as Cessation Orders, sufficient fines, show cause orders on patterns of violations, and liability of individual and corporate officers.

MLRD took enforcement action on only 25 of the 184 violations that were documented in inspection reports for the 18 sample mines. Because most inspections did not include compliance checks for non-visible violations, it is quite likely many more violations existed. The large amount of violations concerning water protection, erosion, and loss of topsoil have created the potential for long-term environmental damage and operators may not be able to reclaim some lands. Repeated violations of water protection standards at the Hawk's Nest, together with similar violations at other nearby mines, have created the likelihood for degradation of the North Fork of the Gunnison River.

In practice, the Colorado Mined Land Reclamation Division has not enforced the state coal mining law, which requires that enforcement action be taken on all violations observed by inspectors. Apparently, it has substituted an informal system that accommodates some violators at the cost of even-handed regulation and long-term environmental protection. The process of turning this situation around will require a great deal of work by the agency, with a strong assist from the Governor, the state legislature, the Office of Surface Mining, and the public. The Division employees have the capability to carry out an effective program under different policies and procedures. Now the task is to make those fundamental changes.

MONTANA

BACKGROUND

When the Surface Mining Control and Reclamation Act was making its way through Congress, Montana, like Wyoming, was one of the few states that already had a fairly comprehensive regulatory program. Moreover, its program was perceived to be enforced in a tough but fair manner. Time after time in debate on weakening amendments, the bill's defenders cited the Montana experience as proof that a certain performance standard had provided environmental protection and that the costs of compliance had not forced mines to close. Thus, many of the performance standards in the federal law and regulations -- including those that protect water resources, require topsoil to be saved, and require restoration of mined lands to productive use -- were modeled in part on Montana's early requirements.

After the passage of SMCRA, the state enacted a new law, issued new regulations, and obtained OSM approval for its program on April 1, 1980. Montana's program is administered by the Department of State Lands (DSL) under the direction of the Board of Land Commissioners. The Governor and four other elected officials make up the Board and the Governor appoints the State Land Commissioner who heads the Department. Within DSL, the Coal and Uranium Bureau of the Reclamation Division performs inspections and reviews permit applications. In 1982, Montana's total regulatory program cost about $1,105,000 and the Office of Surface Mining contributed 75 percent of these costs through its state grant program.

Coal mining in Montana is concentrated in seven counties on the central and eastern plains. In 1982, 10 mines produced 27,838,000 tons, most of which was burned in power plants. Although some underground mining has been done in the past, all currently producing mines use strip mining methods to remove the coal. Five of the thirteen permitted mines were selected as a sample for this study: the Big Sky, Divide, P.M., Rosebud, and West Decker mines. Big Sky, Rosebud, and West Decker each produce several million tons per year for electrical generation, while Divide and P.M. produce under 100,000 tons annually, mostly for home heating.

INSPECTIONS

Frequency

Overall, DSL conducted 93 inspections at the five sample mines in 1982, compared to the 60 required. Because DSL considers every inspection to be a complete one, no breakdown can be made between partial and complete inspections. In general, large mines are inspected twice a month and small mines once a month. The only mine in the sample that did not receive the minimum of twelve inspections was the P.M. mine, which received eleven.

Completeness

Montana's inspection report consists of a four-page checklist that includes 55 regulatory items. The inspector checks one of three boxes for each item according to whether the operator is in compliance, out of compliance, or no activity is taking place. Additional comments may be written in the space provided at the end of each section. The report forms appear to give complete coverage of the regulations to be checked on an inspection with three important exceptions: review of all areas of the mine site; compliance with mine permit conditions, and maintenance of monitoring records and certifications; and a confirmation that the inspector took photographs, water samples, and measurements and collected other evidence of compliance.

A review of the 1982 inspection reports for the five mines in the sample indicated that many inspections were not complete, despite the fact that most inspectors checked off each item boxes and most wrote additional comments. Few reports included information on the three items omitted from the checklist. On some inspections, the operator's compliance with one or more of the eleven categories in the report form was not documented, indicating that the inspection may not have been complete. For example, on the June 18, 1982 inspection of the P.M. mine, category 10 -- compliance with the coal conservation and mine plan -- was not checked.

In addition, many reports indicated that inspectors did not consistently follow up on violations and problems observed on previous visits. For example, in February 1982, an inspector found that the Big Sky mine was not keeping a blasting log and that the pre-blast warning signals were not audible, if any were indeed sounded. Both a log and audible signals are required to ensure that proper measures are taken to protect personal health and safety during blasting and to prevent destruction of property. Despite these requirements and the previous violation, the March 1982 report gave no indication that the inspector checked the operator's activities with respect to either of these two items. In interviews, inspectors confirmed that they usually concentrate on their areas of technical expertise and make few observations on others. Thus, an inspector trained in soil science may make only a casual check of the water management practices.

Very few reports contained an indication that photographs and soil samples were taken during the inspections and none mentioned water samples, slope measurements, and the use of other methods to check compliance and document conditions. Inspectors told the authors that photographs are always taken on inspections and filed with their reports, although the reports may not so state. They also said that soil and overburden samples are frequently taken in order to confirm that the operator is properly removing, storing, and replacing these materials. Water samples, however, are rarely taken, and one inspector stated he had never taken a water sample although he was trained to do so. In interviews, Department administrators stated that inspectors carry a kit containing current mine maps, inspection forms, camera, and a copy of the regulations on each inspection. This kit is checked periodically for completeness, but the water sample kit is carried only when the inspector has planned in advance to take samples on a certain inspection.

ENFORCEMENT

Violations

In 1982, NOVs were issued for seven of the 107 violations described in inspection reports at the five sample mines; no COs were issued and no proceedings were held on patterns of violation. (See Table 1.) The violations that resulted in the seven NOVs included: mining in violation of the mining permit; construction of an unauthorized haulroad; spoil deposited on unstripped topsoil; sedimentation off the permit area; flyrock from blasting that landed off the permit area; failure to save topsoil; and construction of a topsoil stockpile prior to approval (DSL, "Notices of Violation," 1982, p. 1).

The types of observed violations for which no enforcement actions were taken included: 37 failures to control erosion, water runoff, and sedimentation; 15 failures to salvage, store, and protect topsoil; 17 failures to use proper blasting procedures; 18 failures to post perimeter, topsoil, and buffer zone signs; and 13 failures to properly grade, replant, or adhere to miscellaneous requirements. In addition, 12 of these violations were also situations where the operators failed to abate NOVs and, therefore, DSL should have issued COs.

In interviews, Departmental officials acknowledged that the state law and regulations require enforcement action to be taken on all observed violations but that in practice some violations were not cited. John North, General Counsel for the Department, stated:

> Our philosophy is if a situation contravenes the statute and regulations, then it is a violation. If the violation is minor, then that would be reflected in a lower amount of fine. Unless the situation is petty, we issue a violation.

TABLE 1. Violations Observed and NOVs Issued at the Montana Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATIONS
Big Sky	6	0	0	0	0
Divide	25	3	0	0	0
P.M. Coal	21	2	0	0	0
Rosebud	54	2	0	0	0
West Decker	1	0	0	0	0
TOTAL	107	7	0	0	0

Gary Amestoy, Administrator of the Reclamation Division, stated:

> We try to issue citations on all violations . . . but if there is no environmental damage, we don't because we could spend one thousand dollars to collect a two hundred dollar fine.

Contrary to these statements, many of the uncited violations were serious and did cause or had the potential to cause immediate environmental damage or long-term effects on reclamation, especially considering the cumulative effects of many similar violations. For example, on seven of the twelve inspections conducted at the Divide mine in 1982, inspectors observed ten violations that caused the loss or contamination of topsoil but DSL took enforcement action on only two, issuing NOV 93 on July 14, 1982. Not only did many of these violations continue for most of the year, but DSL also failed to issue a CO when the operator did not abate the cited violations within the time limit. (For additional discussion see the "Abatement" section.)

In another case, an inspector observed that the dam and sedimentation pond "B" at the Rosebud mine had partially caved into a hole 8 feet in diameter by 4-6 feet deep with a long crack 2-3 feet wide by 1-1.5 feet deep extending into the pond area; two other deep cracks were visible across the top of the dam. Although the dam obviously had a good potential to fail and cause sedimentation, erosion, and perhaps even harm to livestock, DSL took no enforcement action when the situation was first observed (4/13-15/82). A later inspection report noted that the dam and pond lay "near a subdivision" and had not yet been repaired (5/20/82). It also stated that, "this problem will be corrected after the cattle are removed from the area -- check in approximately one month." In June, another inspector stated he saw no subsidence cracks in pond "A-2" (6/16-18/82); however, this designation is different from that used ("B") in the April inspection report. Thus, it's not clear that the inspector is referring to the same pond. Subsequent inspection reports make no further mention of this situation.

In addition, many of the uncited violations illustrate the consequences of not posting signs and markers -- violations that could appear to be "petty" or to have no potential of causing environmental harm. Signs and markers are necessary to alert mine personnel to certain features that must be protected from disturbance, such as topsoil storage piles, stream buffer zones, and lands outside the permit area. Almost every time a Montana inspector found that an operator had caused some type of damage to one of these three areas, the inspector also found that the signs were down or had never been placed. At the P.M. mine, for example, the 1982 reports noted repeated failures to post perimeter markers and signs on topsoil storage piles and also described repeated violations where the operator disturbed the stockpiles or caused off-site damage. While the issuance of NOVs for failures to have proper signs cannot ensure that mine employees will read and heed the signs, operators will soon tire of paying fines for these mistakes and require their employees to comply.

DSL's consistent failure to take enforcement action and make violators comply with its law is an outgrowth of two practices: prohibiting inspectors from issuing NOVs and substituting warnings and persuasion for the law's mandate to take enforcement action immediately when violations are observed. These policies are discussed in the following two sections.

Inspectors' On-site Authority

All seven NOVs issued to the sample mines in 1982 were issued out of the Department of State Lands headquarters in Helena, often after a considerable amount of time had elapsed following the inspectors' initial observations. Although field issuance by inspectors is clearly authorized by law (MCA 82-4-251), Department employees stated in interviews that DSL policy prohibits inspectors from issuing any NOV at the mine site and allows them only to write COs on site. Inspectors are required to report violations to a supervisor and then either the Director of the Coal and Uranium Bureau or the Legal Counsel for the Department decides whether to issue an NOV. According to Legal Counsel John North, this policy was set by the former State Land Commissioner Gareth Moon and retained under the present Commissioner, Dennis Hemmer. Mr. North also stated that the policy had never been put in writing, but that inspectors were given verbal instructions on the procedure.

Apparently, Departmental officials do not allow inspectors to issue NOVs at the mine site because they lack confidence in the inspector's abilities to determine whether violations are occurring and to write NOVs that are legally defensible. Reclamation Division Administrator Gary Amestoy stated that inspectors are not allowed to issue NOVs at the site:

> [S]o we don't have to vacate the NOV or waste our time on some legal technicality. One inspector can't know all of a mining and reclamation plan.

He added that inspectors were expected to issue COs on the mine site, but he could not recall if any had ever been issued. A review of the records indicated that no cessation orders were issued in 1981 and 1982.

When asked if any program was planned to train inspectors in the proper methods of determining the existence of violations and properly writing citations, Mr. Amestoy stated that:

> [The Department] has never given that kind of training a thought. No environmental harm has resulted from the lack of field issuance and our philosophy is 'if the system ain't broke, don't fix it.'

However, a review of the record shows that this policy did delay abatement and allow serious violations to persist for months. The delay in issuing seven NOVs ranged from 19 to 238 days, averaging 74 days.

Warnings

Instead of taking immediate enforcement action on violations, the record shows that DSL gave warnings and attempted to persuade the operators to abate the violations. As was previously discussed, the State Land Commissioner had a policy that prohibited inspectors from issuing NOVs at the mine site. Therefore, after inspectors had filed reports that described violations, the Chief of the Coal and Uranium Bureau reviewed them and took charge of resolving any violations noted by the inspectors. Gary Amestoy, now Administrator of the Reclamation Division, held the Chief's position during 1982. On most violations, Mr. Amestoy contacted the operators by telephone or letter, informed them of the situation, and requested abatement. In a few instances Mr. Amestoy decided to issue an NOV at some future time, often only after a violation had been noted on several inspections. Mr. Amestoy described these contacts and decisions in handwritten comments in the inspection reports, such as "the company was made aware of the problem," or "a violation will be pursued."

According to the records, few enforcement actions were actually taken, many violations were allowed to continue for months, and operators apparently were allowed to ignore abatement at their convenience. (See Table 2 for quotes of some examples of the inspectors' descriptions of violations and DSL's "resolution," as described in Mr. Amestoy's comments.) For example, an NOV was issued to Western Energy on April 6, 1982 for mining in violation of the approved mining plan in Area B and failing to reconstruct the correct topography at the Rosebud mine; the NOV gave the operator 30 days to correct the situation. Despite the fact that this violation was first observed on the August 11, 1981 inspection and could cause serious difficulties in achieving successful reclamation, no enforcement action was taken for almost eight months. As Table 2 shows, the violation was also observed May 20, after the abatement deadline of the NOV. (See also Table 3.)

As the Rosebud mine example shows, the informal approach to obtaining compliance did not produce effective or timely abatement of violations, and the mine operators appeared to ignore the Department. This behavior also held true when the Department wrote the operators requesting information and giving warnings about violations. By letter on September 27, 1982, Mr. Amestoy informed Western Energy of five situations observed by state inspectors and requested additional information about the company's practices and mine plan. On January 7, 1983 Mr. Amestoy again wrote the company requesting a reply to the September letter and the submission of additional information on two issues. He also set an informal -- that is, unenforceable -- abatement date for one violation and noted some violations that had not been corrected. It stated:

> The slumping problem at A-2 pond has not been corrected. (See letter of September 27, 1982) . . . . What is the status of the slumping in Area B in addition to the area identified in 1980? (See letter of September 27, 1982). Western Energy must install perimeter and buffer zone markers by no later than February 1, 1983. Western Energy must provide access control. In areas of concentrated construction activities, especially adjacent to the county road, hazard reduction practices must be utilized to prevent possible injury to the public . . . . Please respond to this letter and the letter of September 27, 1982 by no later than January 20, 1982.

On January 17, 1983 Western Energy replied, stating that the A-2 pond was "partially repaired" but not completed because of "winter weather and poor field conditions;" that the slumping "appears to have resulted from the handling of frozen material;" that boundary markers would be installed by February 1; and that "every precaution is being taken to insure the safety of both the public and those involved in the construction activities." The letter did not describe the specific precautions being taken or state when buffer zone markers would be placed. No record could be found indicating whether the Department considered these responses adequate.

TABLE 2. Description of Violations and DSL's "Resolution" as Contained in the Inspection Reports for the Rosebud Mine.

INSPECTION DATE	DESCRIPTION OF VIOLATION	DSL's "RESOLUTION"
Feb. 25, 1982	"Culvert under Railroad loop still plugged . . . soil and gravel is frozen in culvert." (p.2)	"Western Energy will clean when weather moderates." (Id.)
	"Stockpile in Area B has over 2-foot deep rills and losing topsoil." (p. 3)	"Western Energy is aware of the problem and . . . will remedy ASAP." (Id.)
Mar. 17, 1982	"Landscape configuration . . . in Area b is inconsistent with the approved plan." (p. 1)	"A violation will be pursued on this issue." (Id.)
Apr. 27, 1982	"Area B, sec 10 has small strip of reclamation that has (overburden) on it." (p. 4)	"Western Energy will clean up the area." (Id.)
	"Culvert under Railroad loop . . . is still plugged. I recommend a violation should be issued in 30 days if not (cleaned)." (p. 2)	(Blank)
	"Area B, sec 3 has rilling over 9 (inches) -- some places 3 (feet) deep." (p. 3)	"Western Energy is aware of the situation. They will take care of this as soon as possible." (Id.)
May 20, 1982	Area B . . . still mining according to unapproved plan." (p. 1)	"DSL will pursue a violation on this issue." (Id.)
	No change along sed(imentation) pond in Area B, sec 3 -- rilling has not been corrected." (p. 1)	"Western Energy is aware of this issue, will fix ASAP." (Id.)
Oct. 28, 1982	Approved locations for topsoil piles along conveyor corridor not being used . . . . [T]opsoil has been stockpiled in an unapproved location. Photos taken." (p. 2)	"DSL is considering a violation. Western Energy is aware." (Id.)

As the preceding discussion and examples indicate, DSL's informal enforcement system did not produce timely correction of many serious violations. The Department failed to use the enforcement tools available and allowed most violations to continue for months before enforcement action was taken.

Abatement

Like SMCRA, Montana law requires NOVs to specify abatement measures and deadlines and prohibits the time period for abatement to exceed 90 days (MCA 82-4-251.) If abatement does not occur within the deadline set by the notice and no good cause is shown, the law instructs that a CO be "immediately" issued. (Id.)

The records show that DSL often allowed operators to take far longer to abate the violation than the time specified in the NOV and far longer than the maximum 90 days in the law. In addition, DSL did not issue COs to curb these delays. For the NOVs on which information could be found, the delays ranged from 160 to 275 days, as shown in Table 3.

The inspection reports subsequent to the prescribed abatement dates show that inspectors observed that abatement had not been accomplished but they did not issue the legally required cessation orders. For example, ten reports on inspections at Rosebud note that Western Energy was continuing to mine in violation of its approved mine plan after the of May 6, 1982 deadline set in NOV 89.

PENALTIES

DSL assessed a total of $9,100 in fines for nine violations in 1982, and the average assessment was $1,011 per violation. DSL made no use of the other penalty provisions of its law, such as show cause orders on patterns of violation or individual and corporate officer liability. In comparison, the average fine assessed by OSM for 50 NOVs at western mines was $1,691 during the 1979-81 period, 60 percent more than the average levied by Montana.

TABLE 3. A Comparison of Prescribed and Actual Abatement Dates.

MINE NAME	NOV ID NO.	DATE ISSUED	ABATEMENT DATE	ACTUAL ABATEMENT	NO. OF DAYS
Rosebud	89	Apr. 6, 1982	May 6, 1982	Jan. 6, 1983	275
Divide	92	July 7, 1982	Aug. 23, 1982	Dec. 14, 1982	160
Rosebud	94	Oct. 4, 1982	?	May 23, 1983	231

(Sources: Abatement dates, Susan McNally, Chief, and Scott Frickel, Coal and Uranium Bur., oral communs., Oct. 5, 1983, and Oct. 12, 1983, respectively; other data from "Notices of Violation," Coal and Uranium Bur., 1982.)

Under Montana law, the Board of Land Commissioners, which oversees the Department of State Lands, issues a proposed fine within 10 days after a violation is cited. The operator then has 20 days after receiving the citation to request an informal conference in order to contest the occurrence of a violation or the amount of the proposed fine. After the hearing is held, or the time for requesting one has expired, the Board must issue its written decision on whether the violation occurred and set the amount of of the fine to be paid, if any. The operator is required to pay the fine within 30 days of the decision (MCA at 82-4-254(2)). Fines can range from $100 to $5,000 for the violation and $100 to $5,000 for each day of violation (MCA at 82-4-254(1)). Four criteria are used by the Board to determine the amount: history of violations, seriousness, degree of negligence, and good faith in abating the violation.

From the records available available to the authors, it was not possible to determine either the date the operator received the citation or when the Board issued the proposed fine. In addition, no information was available on how the criteria were used in assessing individual violations. However, dates for the issuance of the NOVs were available and if one assumes that the operator received the NOV within seven days of issuance, payment should have been made within 27 days of NOV issuance. As Table 4 shows, operators delayed paying penalties for many months.

From the records, it appears that operators may be given an opportunity to negotiate the amount of penalty without requesting an assessment conference. The NOV form used by DSL instructs the operator to send a statement "of the days of violation and mitigation factors" before a penalty is proposed. The weight given by the Board to such statements in determining the amount is unknown, but the low amounts assessed for violations that extended over a long period of time, as shown in Table 3, indicate that the Board assessed largely token fines. (Scott Frickel, Coal and Uranium Bureau, oral commun., Oct. 12, 1983).

TABLE 4. Amount of Penalties Paid and Length of Time between the Issuance of NOVs and the Payment of Penalties for all NOVs Issued in 1982. (*=multiple violations)

MINE NAME	NOV ID NO.	DATE ISSUED	DATE PAID	AMOUNT	PAYMENT TIME
Rosebud	89	Apr. 6, 1982	Jan. 10, 1983	$5,000	279 days
Spring Creek	91	June 24, 1982	Dec. 17, 1982	400	178 "
Divide*	92	July 7, 1982	Mar. 11, 1983	600	247 "
P.M.*	93	July 14, 1982	(Not yet paid)	200	(?)
Rosebud	94	Oct. 4, 1982	Jan. 6, 1983	400	94 "
Coal Creek	96	Dec. 23, 1982	May 4, 1983	2,500	132 "
			AVERAGE PAYMENT TIME	=	186 days

SUMMARY

After the passage of SMCRA in 1977, Montana showed the most promise of any of the six states for quickly attaining the goals of the Act. It had competent staff, wide political support, and experience in running a coal regulatory program. Furthermore, the state had a strong populist tradition that encouraged the state agencies to regulate fairly and remain independent of politically powerful interests.

Review of the records for the sample mines shows that much has changed since 1977. Apparently, the Department of State Lands no longer regulates nor remains independent of the coal industry. Although the agency conducted more than an adequate number of inspections in 1982, little resulted from those inspections. Enforcement actions were taken on only 6.5 percent of the violations observed by DSL inspectors. When the rare NOV was taken, the operator was allowed to delay abatement for months and it was not effective in achieving prompt abatement. The Department substituted warnings and persuasion for mandatory enforcement and allowed operators to commit repeated violations. This approach allowed violations to persist for months even though they had the potential to cause serious or long-term environmental harm.

In sum, Montana's regulatory program consists largely of going through the motions. Operators can and do ignore the Department's regulations and directives. Apparently, Montana has abandoned the original goal of its program and substituted one of appeasing violators for the inconvenience of complying with its law. In order to recover its program, the Governor and the other members of the Board of Land Commissioners will have to set new policies for the Department and ensure that the necessary staff, direction, and political support are provided.

NEW MEXICO

BACKGROUND

Before the passage of SMCRA, New Mexico had no effective on-the-ground controls to prevent damage from coal mining and to require mine operators to reclaim mined land for productive uses. The state had a reputation for laissez faire state government that did not care enough about the social and environmental effects of uncontrolled mining on its residents and lands to devote any significant resources to an effective regulatory program. This reputation was borne out by the actions of some irresponsible operators whose only apparent concern was ripping up the land to remove the coal, leaving a wasteland to commemorate their passage. Thousands of acres were mined without adequate safeguards and as a result, these lands may never achieve their premining production potential.

OSM approved New Mexico's program on December 31, 1980 after the state legislature had enacted the New Mexico Surface Mining Act and the Coal Surface Mining Commission had adopted implementing regulations. The Mining and Minerals Division (MMD) of the Energy and Minerals Department administers the program primarily through its Bureau of Surface Mining. The seven member Coal Surface Mining Commission adopts the regulations that MMD administers and, by law, its members are the directors of state agencies concerned with natural resources, agriculture, environmental protection, and state lands. In 1982, the total cost of New Mexico's program was about $500,000, of which 81 percent came from OSM grants.

Coal mining takes place primarily in the Raton basin in the north central part of the state and the San Juan basin in the northwest. In 1982, 12 mines -- one underground and 11 strip -- produced about 17 million tons of coal, most of which supplied electric generating power plants. In addition to the 12 producing mines, two other mines had stopped production and entered the reclamation phase. Of these 14 operations, the authors selected five as a sample for intensive review of the inspection and enforcement records: De-Na-Zin, McKinley (South), San Juan, Tres Hermanos, and York Canyon. York Canyon comprises both strip and underground mining operations and Tres Hermanos is under reclamation; all but the underground portion of York are strip mining operations.

INSPECTIONS

Frequency

Overall, MMD conducted 90 percent of the inspections required at the five sample mines in New Mexico during 1982. The required number of complete and partial inspections were conducted at three of the five mines. The Tres Hermanos mine -- which has been regraded and is under final reclamation -- was inspected a total of only five times, while the underground operation of the York mine complex received only two of the required four complete inspections.

Completeness

Review of the records and interviews indicated that many of the inspections conducted by MMD were incomplete. Inspections were too brief for all mine areas and activities to be reviewed for compliance and the reports lacked documentation of observations.

In interviews, the authors asked Ed Kelley, Director of MMD, and Jack Reynolds, Chief of the Surface Mining Bureau, to estimate the amount of time complete inspections of three large mines should take an experienced inspector under average conditions. As Table 1 shows, when the authors compared these estimates against the actual times recorded by inspectors in their reports, the actual times were considerably less than the estimates and did not allow for thorough review of the several square miles of disturbed land.

TABLE 1. A Comparison of Actual and Estimated Times for MMD to Conduct a Complete Inspection of Three Mines in New Mexico.

MINE NAME	AMOUNT OF DISTURBED ACREAGE	MMD ESTIMATE OF INSPECTION TIME	MMD ACTUAL AVERAGE TIME
McKinley	3,680	6-8 hours	4.1 hours
Navajo	7,117	16 hours	3.4 hours
San Juan	2,062	8-12 hours	3.1 hours

Overall, partial inspections at the sample mines (not counting aerial inspections) took an average of about one and one-half hours while complete inspections took an average of 2 hours and 14 minutes. The time it took to conduct inspections at each mine also varied widely. At the York surface mine, for example, one complete inspection took six hours (York Surface mine, 1/19/82), while another "complete" inspection was conducted in only 40 minutes (York Surface mine, 7/1/82).

New Mexico frequently assigns two and three staff members to conduct an inspection. According to Director Kelley, this practice is followed primarily to ensure that inspectors are trained at the mine site. Mr. Kelley also stated that inspectors generally stay together during the inspections unless one inspector stays behind to take a water sample. Therefore, the presence of additional inspectors does not justify the short time it took MMD to conduct many inspections.

In interviews, OSM inspectors indicated that inspections by MMD were not as thorough as necessary. In many cases, MMD conducts "windshield" inspections, according to OSM, in which inspectors primarily drive around the mine site and view mining operations from inside a vehicle.

A serious incident involving the unauthorized disposal of hazardous waste at the San Juan mine indicates that some MMD inspectors are not familiar with mine permits and do not thoroughly investigate potential violations at the mine site. This incident illustrates some of MMD's inadequate inspection practices and is described in a later section, "The San Juan Mine -- A Case Study."

Inspection Reports

Most inspection reports filed by MMD inspectors contained very brief descriptions of mining activities and the inspectors observations. Information is seldom given on the areas and activities reviewed for compliance. Most descriptions consist merely of the following generic statement, which concludes almost every MMD inspection report.

> No violations of NM CSMC Rule 79-1 were noted. All potential problems were discussed with the operator at the mine site and reported to the Director of the Mining and Minerals Division.

A checklist of specific areas and regulatory requirements similar to the checklist accompanying OSM inspections is used by MDD inspectors, according to Mr. Kelley, but completed checklists are not filed with inspection reports. He said the checklists and inspectors' field notes were filed separately from the inspection reports but neither he nor other staff members could locate any for the authors to review.

In and interview with Mr. Kelley, he stated that inspection reports are intentionally kept brief and uninformative to prevent detailed review by OSM. He stated:

> We don't write many problems in reports because then OSM might write Ten-day Notices. If you put it in writing, you just get trouble.

Extremely brief reports leave no record of mine activities and problems, which should be documented for other MMD inspectors, permitting staff members and administrators who are involved in mining activities. In addition, more thorough documentation of MMD inspections is necessary for the public, the MMD administrators, and those involved in OSM oversight activities to confirm that inspections were as thorough as necessary. Combined with the other deficiencies described above, this lack of documentation indicates that MMD inspections are frequently inadequate to meet the requirements of SMCRA and the state program to ensure that performance standards for environmental protection are met.*

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*It should also be noted that the lack of descriptive information contained in MMD reports could also cause the results of this study to underestimate the total number of violations observed but not cited by MMD inspectors. Similarly, MMD's record of enforcement, in terms of the percentage of violations which resulted in enforcement action, could appear better in relation to the record of other agencies that include more description in their inspection reports.

Aerial Inspections

Partial inspections in New Mexico are frequently conducted by airplane. The advantage of these "fly-over" inspections, according to MMD officials, is that several mines can be covered in a single day and that problems not easily visible from the ground can be easily spotted from an airplane. Aerial inspections may have several advantages in New Mexico, but the manner in which MMD conducted the "fly-overs," makes the adequacy of these inspections highly questionable. Aerial inspections were conducted in an extremely brief period of time, averaging approximately 6.5 minutes, with two or three inspectors present in the airplane.

When problems or apparent violations were observed, inspection reports indicate that no enforcement actions were taken and that no immediate on-site follow-up inspections were conducted to investigate potential violations. To illustrate, the report for the June 7, 1982 aerial inspection of the York complex contains four photographs identified as the "central area reclamation depicting potential erosion problems" and another photograph identified as the "central area reclamation plot depicting potential raw spoil being carried into drainage." No enforcement action was taken on the basis of these aerial observations and the mine was not inspected again until the next regular inspection -- more than three weeks later on July 1. This on-site inspection confirmed that topsoil was not protected from contamination by waste material, as the aerial inspection had noted, but no enforcement action was taken because the operator "agreed to begin correcting [this violation] immediately," according to the inspection report (MMD, York Canyon, 7/1/82).

OSM administrators in Washington, D.C. ruled in August 1982 that aerial inspections could be used to fulfill the requirements for partial inspections, provided several conditions were met. Among the OSM regulations released was the requirement that:

> Aerial inspections shall be conducted in a manner which reasonably assures the identification and documentation of conditions at each . . . site being inspected. (30 CFR 842.11 (c)(1)(i)(B).)

In addition, OSM required that "when an aerial inspection clearly identifies a violation the regulatory authority should promptly issue a violation . . . based on the aerial inspection." When a potential violation requiring closer inspection is detected from the air, OSM's new rules require an on-site follow-up inspection within three days. (Fed. Reg., Vol. 47, No. 158 Aug. 16, 1982, p. 35622.)

None of the MMD inspection reports for aerial inspections at the sample mines noted potential violations after publication of OSM's regulations; therefore, the Division's compliance with the new regulations regarding follow-up inspections cannot be determined. The one aerial inspection conducted after August 1982 at a mine in the sample took place in 5 minutes, and the report contained no description or documentation of the inspection, except a statement that "No violations . . . were observed" (MMD, York underground, 11/9/82.) This suggests that MMD made no significant change in the conduct of aerial inspections in response to the OSM's regulations.

ENFORCEMENT

Violations

MMD inspection reports indicate that MMD issued three NOVs for the ~~20~~ 32 violations observed at the five sample mines during 1982. No COs were issued, and no proceedings were held on patterns of violation. This information is summarized in Table 2.

TABLE 2. The Violations Observed and Enforcement Actions Taken at the New Mexico Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATIONS
De-Na-Zin	4	0	0	0	0
McKinley (South)	3	0	0	0	0
San Juan	7	1	0	0	0
Tres Hermanos	3	0	0	0	0
York Canyon	15	2	0	0	0
TOTAL	32	3	0	0	0

Violations observed by inspectors but not cited included lack of sediment pond maintenance and effluent violations (MMD, York mines, 4/19, 5/4 and 10/13/82); failure to control erosion on reclaimed areas (MMD, York mines, 5/4 and 11/9/82); failure to protect topsoil from erosion (MMD, York surface, 4/19 and 5/4/82; and De-Na-Zin, 4/21 and 5/18/82); failure to protect topsoil from contamination from waste materials, spoil and coal fines (MMD, York underground, 7/1/82; and McKinley, 7/6/82); failure to maintain berms diverting surface runoff (MMD, York mines, 1/19, 4/19 and 11/9/82); and failure to construct drainage around a coal stockpile so that coal could be transported by runoff directly into the San Juan River (MMD, San Juan 1/13 and 2/15/82).

In interviews, Director Kelley explained why MMD does not cite most violations. According to Mr. Kelley, operators respond and abate problems more quickly when verbal or written warnings are issued than NOVs or COs. When warnings are issued, "The problem often gets fixed before we leave the site," said Mr. Kelley. Formal enforcement actions, on the other hand, result in litigation that delays abatement, according to Mr. Kelley, although he could not name or document any case in which abatement was delayed by litigation. "If a company has been warned first," he said, "they won't fight the NOV."

Prevention of Environmental Impacts

Although many specific requirements in New Mexico's approved program are parallel to those in the federal Act and are designed to prevent the occurrence of environmental damage, MMD did not take enforcement actions regarding many observed violations apparently because environmental damage had not yet occurred. Many of the violations described in inspection reports, for example, concerned situations in which berms were not adequately built or maintained to minimize erosion and sedimentation. In response to questions concerning these types of violations, Director Kelley explained that NOVs were usually not issued if environmental harm had not occurred. "In several cases occurring at the sample mines, Mr. Kelley explained, the berms may have been down, but water had not been polluted." In an interview, one MMD inspector also explained that he felt erosion and water control problems were not crucial in months when precipitation and runoff were low.

Inspection reports indicated that MMD failed to take enforcement action in several cases even though environmental damage appeared to be imminent. For instance, Emery C. Arnold, former MMD Director, sent a letter indicating that on the July 1, 1982 inspection of the York Canyon underground mine, a road constructed of waste materials was found to be located immediately adjacent to, and at a higher elevation than, a topsoil stockpile. As the letter stated:

> At the time of the inspection no means had been provided for protection of the topsoil stockpile from the mixing of topsoil and waste materials and from potential contamination caused by precipitation runoff. (Emery Arnold to Kaiser Steel Corp.)

Also, the inspection reports indicate that enforcement action was not taken when environmental degradation had already occurred and would increase unless measures were taken to abate the violation. For example, the October 10, 1982 inspection report for the San Juan mine, noted that:

> The road over the Westwater Diversion . . . evidenced significant erosion. The downstream of the road culvert significant headcutting had occurred. If the area is subject to heavy rains or snowmelt runoff the road is likely to be washed out. [The operator] has proposed "watching the situation" before attempting any corrective measures.

The environmental effects of some types of violations, such as those described above, may seem minimal when considered by themselves. However, many violations, such as the failure to maintain sedimentation and erosion control systems, can and do have significant impacts in the event of a sudden rainstorm, for example. In addition, a series of seemingly insignificant violations can result in excessive cumulative impacts.

Warnings

In place of taking the required enforcement actions, MMD frequently sent "letters of deficiency" to operators that described violations observed by inspectors and instructed operators to correct these "deficiencies." For example, the July 6, 1982 inspection report for the McKinley mine specifically stated that:

> The topsoil stockpile located south of Pit 8, west of Pit 11 is not being stored according to NM CSMC Rule 79-1. Spoil material and coal fines were mixed with the topsoil.

Instead of issuing an NOV, the inspector discussed the problem with the operator, according to the inspection report, and reported it to the MMD Director. Mr. Arnold then sent a letter describing the topsoil violation -- in addition to two other violations observed during the inspection -- and stated that:

> These deficiencies are being brought to your attention for immediate correction. Failure to do so will result in the issuance of Notices of Violation. (Emery C. Arnold, Pittsburg and Midway Coal Mining Company, July 17, 1982.) (See also, letter from Emery Arnold to Mr. Terry Bauer, Sunbelt Mining Company, May 26, 1982, De-Na-Zin inspection files; letter from Emery Arnold, to E.P. Moore, Kaiser Steel, July, 6, 1982, York inspection files; and letter from Ed Kelley, to John Wilson, Pittsburg & Midway, Aug. 24, 1982, McKinley inspection files.)

According to Director Kelley, MMD does not consider the situations described in letters or inspection reports to be violations unless the operator fails to correct them as instructed by MMD. "If a problem persists until the next month we'll issue an NOV," explains Kelley.

In several cases, operators did not heed the warnings. For example, the January 13, 1982 inspection report for the San Juan mine stated that coal was being stockpiled without drainage control and "could be transported by runoff directly into the San Juan River." By the February 15 inspection, the coal was still there and no drainage had been constructed. (See also San Juan, 10/5/82 and 11/18/82; Assessment conference report for NOV 021, Feb. 26, 1982; and York complex, 2/16/82 and 5/4/82.) In another case, an operator simply refused to abate a violation as requested by an MMD inspector. This situation is described in the following passage from the May 4, 1982 inspection report by an OSM inspector accompanying the state inspector at the York mine complex:

> The State inspector had some question about the diesel storage tank location and potential containment area. The company refuses to build a berm around the tank. Instead, they maintain that the berm, around the entire permit is sufficient. The inspector disagrees with this concept and is in the process of researching other government regulations to see if the problem is addressed in some other area.

MMD took no enforcement actions on these two violations.

Abatement

The warnings issued by MMD often do not specify a deadline and the abatement requested is ambiguous. For example, the operator of the York surface mine was instructed to repair and stabilize erosion on topsoil stockpiles and newly reclaimed areas by "the rainy season". (See 4/19/82 and 5/4/82 inspection reports). Similarly, the January 12, 1982 inspection report for the Tres Hermanos mine, which is inactive and under reclamation, noted that erosion "may require repair prior to the 1982 growing season" (1/12/82). When erosion continued to occur, the July 27, 1982 inspection report again noted that "if erosion continues to accelerate the placement of more rock may be necessary to form rock waterways."

MMD delayed considerably the abatement of violation by using unenforceable warnings and by not taking immediate enforcement action when violations were first observed. Table 3 shows that the average delay between observation of violations and issuance of NOVs was about 39 days.

Director Kelley told the authors that NOVs were not terminated until after inspectors had made a site visit to confirm that the operator had properly abated the violations compliance in the field. In several cases, however, MMD records indicated NOVs were terminated before an inspector had checked the site to ensure that the abatement measures required by the NOV were carried out. At least three NOVs -- NOVs 021, 022 and 025 -- were terminated before inspections were made to confirm that they had been abated, and another violation -- NOV 026 -- was terminated after a fly-over inspection.

One case at the York mines illustrates the importance of not terminating NOVs until compliance is verified by an on-site inspection. NOV 021 was terminated on January 27, 1982 after MMD received a letter on January 26 from the operator indicating that the violation had been abated. However, when the mine was next inspected approximately three weeks after the NOV had been vacated the violation was found to still exist. As a letter from former MMD Director Emery Arnold to the operator explained:

> Spoil material was dumped in the York Canyon stream bed, resulting in the issuance of NOV 021 which required the immediate removal of the spoil material . . . . Although Kaiser subsequently stated [that] "spoil material that was dumped across the drainage has been removed . . . this inspection disclosed a significant amount of spoil material remaining in the stream bed. Immediate removal of all the remaining spoil material is required, as specified in NOV 021.

TABLE 3. Comparison of Dates When Violations were Observed and When Citations were Issued.

MINE	NOV	VIOLATION	FIRST OBSERVED	NOV ISSUED	DELAY (days)
York mine	021	Breached berms.	Sept. 30, 1981*	Jan. 22, 1982	114
York mine	022	Breached berms.	Mar. 10, 1982	Mar. 30, 1982	20 7
Potato Canyon Exploration	024-1	Failure to minimize water pollution.	Apr. 19, 1982	Apr. 26, 1982	7
	024-2	No warning sign on explosives magazine.	"	"	7
	024-3	Discharging water without a permit.	"	"	7
Upper York Exploration	025	Removal of alluvial material without a permit.	May 4, 1982	May 10, 1982	6
Upper York Exploration	026	Did not construct stream crossings according to permit.	Feb. 16, 1982	May 10, 1982	83
San Juan mine	079	Dumping of 700,000 gallons of liquid slurry in mine pit.	Oct. 5, 1982	Dec. 9, 1982	65

AVERAGE DELAY = 38.6 DAYS

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*MMD inspectors observed that berms had been washed out during a September 1981 inspection. The "operator's representative indicated that . . . the berms would be repaired as soon as the area was dry enough for equipment to work in the area," but the berms were still not repaired by the time an NOV was finally issued on January 22, 1982 -- about four months after the violation was first noticed (Assessment Conference report, NOV 021, 1982).

PENALTIES

Fines Levied

Review of the records indicated that once NOVs were issued, MMD seldom levied a fine. No fines were levied for 11 of the 15 NOVs issued by MMD during 1982, and four NOVs resulted in fines averaging $1,187. Thus, the average fine levied for the 15 NOVs was $317. In constrast, the average fine assessed for 50 NOVs issued by OSM in the western states between 1979 and 1981 was $1,691, more than five times the average fine levied by MMD during 1982. OSM did not levy fines for 10 percent of the NOVs it issued, while MMD chose not to levy fines for 73 percent of the NOVs it issued during 1982.

Unlike the process for citing violations, the process for levying fines for violations allows the MMD Director to exercise some discretion in assessing fines. Under New Mexico's program, points are assigned for violations based on four factors: the operator's history of previous violation, the seriousness of the violation, whether the operator was negligent; and the operator's demonstrated good faith in trying to achieve rapid compliance after the violation was issued (CSMC Rule 80-1, 31-13). Fines are determined by converting points into dollar amounts according to a schedule contained in the regulations. (CSMC Rule 80-1, 31-14). Fines are mandatory for cessation orders, but the decision to levy a fine for most violations is ultimately up to the MMD Director:

> The Director may assess a penalty for each violation . . . . Normally, a penalty will be assessed when a violation is assigned 31 points or more. (CSMC Rule 80-1, 31-11(c).) (Emphasis added).

MMD interprets this section to mean that a violation assessed at "less than 31 points . . . normally does not require a penalty . . ." (Ed Kelley, York Canyon Informal Penalty Assessment Conference, Report and Decision of Assessment Conference Officer, May 27, 1982.) No fines were levied by the MMD Director for nine of the ten NOVs assessed at less than 31 points during 1982. Based on the points assessed by MMD and the fine schedule in the state program regulations, nine NOVs -- for which an average of 28.78 points were assessed -- could have been assessed fines totaling from $6,930 to $7,750, or an average of $861 to $770 per violation.

Reductions During the Assessment Process

An in-depth analysis of how points were assigned was not undertaken in this study because of the highly subjective nature of this process. However, review of the assessment conference reports indicates that penalties were routinely reduced significantly during the assessment process and that some reductions were awarded for rapid abatement despite the fact that required abatement measures were not completed. MMD did not propose penalties for many penalties and, therefore, the operators did not request assessment conferences for these.

However, the operators did request assessment conferences for all seven of the NOVs for which a penalty was proposed, and the proposed fines were reduced for all seven as a result of the assessment conferences. An average assessment of 45.9 points and $2,567 was proposed for six of the seven NOVs for which operators requested assessment conferences (complete data for NOV 021 was not available). After the conferences, the fines were reduced to an average of 29 points and $678 per violation, a reduction of 74 percent. Penalty points for four of the seven NOVs were reduced to less than 31 points, and the MMD Director chose not to levy fines for three of these violations.

Reductions for Rapid Compliance

The major reason for reducing fines cited in assessment reports was the operator's rapid abatement. Eight of the nine NOVs for which complete assessment information was available were reduced by 10 points for rapid compliance. The extremely high percentage of fines that are reduced for rapid compliance indicates that such reductions are routine, rather than being reserved for cases in which the operator "took extraordinary measures to abate the violation in the shortest possible time" as required by state regulations (CSMC Rule 80-1, 31-13(b)(4)(2)(ii)).

In addition, inspection reports indicate that at least one fine was reduced for rapid compliance even though the violation had not actually been abated. At the assessment conference for NOV 021, Conference Officer Ed Kelley subtracted ten points from the initial assessment for the "good faith" exhibited by Kaiser Steel Corporation's "rapid compliance" in abating the violation. The finding of "rapid compliance" was based solely on a January 25 letter to MMD from Kaiser that the violation was abated by January 22, 1982. When the mine was reinspected on February 16 -- more than three weeks after the operator claimed to have abated the violation -- spoil material in the York Canyon stream bed had not been removed as the operator's letter had indicated and as required by NOV 021 (MMD, York, 2/16/82). Moreover, another NOV was issued less than two months later on April 3 when inspectors discovered another breached berm in an area that the operator was required to inspect and maintain as part of the abatement measures for NOV 022 (York Canyon Mine Informal Penalty Assessment Conference, 5/27/82). With the ten points subtracted for "rapid compliance", NOV 021 was assessed at 30 points and no fine was levied. If the ten points had not been subtracted, the violation would have been assessed at 41 points, which would have resulted in a penalty of $2,000 to $2,100 according to CSMC Rule 80-1. An additional $750 could have been assessed for each day the violation was not abated after the abatement period set in the NOV. (CSMC Rule 80-1, 31-5(b).)

As illustrated by this case, "good faith" can only be accurately assessed once an inspection has confirmed that the violation has been abated. As noted above, MMD reports indicate that at least three NOVs issued during 1982 -- NOVs 021, 022 and 025 -- were terminated before follow-up inspections were made to confirm the abatement and one notice -- NOV 026 -- was terminated after a fly-over inspection.

THE SAN JUAN MINE -- A CASE STUDY

The breakdown of New Mexico's inspection and enforcement system can perhaps best be understood by tracing one violation with potentially serious environmental consequences through all the inspection and enforcement procedures. The following is an account of one such violation at the San Juan mine in northwest New Mexico. The mine is operated by the San Juan Coal Company, a subsidiary of Utah International, which in turn is owned by General Electric. Coal from the mine supplies the adjacent San Juan Generating Station, operated by the Public Service Company of New Mexico.

Groundwater at the San Juan mine may have been seriously contaminated by dumping of chemical waste from a nearby power plant during 1982. From August through September 1982, approximately 700,000 gallons of absorber solution, used in the sulfur dioxide removal system of the San Juan Generating Station, was dumped into a San Juan mine pit. The solution was dumped at a rate of about one truckload a day over the 60-day period, in violation of the mine plan, which did not authorize the disposal of absorber solution (MMD, Informal Assessment Conferance Rept., May 5, 1983).

MMD conducted two partial inspections during the period the absorber solution was being dumped, but the inspection reports indicate that the MMD inspectors did not take notice of the dumping (MMD, San Juan, 8/11/82 and 9/2/82). However, inspectors from the New Mexico Environmental Improvement Division (EID), which regulates discharges from power plants, did notice a truck dumping the absorber solution into the mine pit on September 10, 1982. Power plant employees would not allow them to take a sample of the solution, for analysis, so EID inspectors returned to take a sample after the truck had left the mine site. Analysis of this sample showed extremely high quantities of chemical salts. (Telephone interview with Albert Dye, EID, Nov. 10, 1983.)

After receiving the chemical analysis of its sample, EID informed MMD officials that hazardous waste was being dumped at the mine site on Sept. 23, 1983 (Oral commun., Toby Walters, MMD, Nov. 10, 1983). The next day, September 24, an MMD inspector again inspected the mine but did not take enforcement action (MMD, 9/24/82). That same day, the operator took a sample of the solution and submitted it for analysis. MMD received a copy of the operator's analysis on November 18, but, once again, it did not take immediate enforcement action. Instead the MMD Director sent a letter to the operator stating:

> [W]e have concluded that some constituents are in quantities that could adversely affect the water quality of both ground and surface waters. They are arsenic, lead, mercury, sulfate, boron, nickel, radium 226 and 228. All parameters exceed the human health standards adopted by the New Mexico Water Quality Control Commission in 1981 . . . . We believe it would be detrimental to groundwater if more absorber solution is disposed of at the San Juan mine. (Letter from E. Kelley to J. Mainard, San Juan Coal Co.)

An NOV was finally issued December 8 -- 76 days after MMD was informed of the violation by EID. Although the Notice ordered the operator to immediately stop disposal of all unauthorized materials, it did not specify any abatement measures to remove the material. (MMD, NOV 079, Dec. 8, 1982.)

On December 15, MMD modified the NOV to require the operator was required to pump all the solution from the pit within 15 days. On January 4, 1983 -- five days after the material was to have been completely removed, MMD made a second modification extending the abatement time to January 10. On January 12, MMD conducted an inspection of the site and found "that a large volume of absorber solution was still present." (Letter from Ed Kelley to San Juan Coal Co., Jan. 20, 1983.) This letter went on to state:

> In order to allow you additional time, I am extending the time limit for abatement until February 9, 1983. . . . It may be necessary, because of weather events or continuing seepage to extend the deadline further. The decision about further extensions will be made after inspection and consultation (Id.).

Once again, San Juan Coal Company failed to remove the solution before the modified abatement deadline, and, once again, on February 11 MMD extended the time to March 9 -- the maximum 90 days allowed by state law (MMD, NOV 079 Modification). On March 9, MMD terminated the NOV. Despite the fact that all the material had not been removed, no Cessation Order was issued. The termination notice stated:

> The Director reserves the authority to order complete removal of all material (MMD, Termination Notice, Mar. 9, 1983).

On May 11, MMD proposed a penalty of $3,100. After an informal penalty assessment conference on June 17, the penalty was reduced by 42 percent to $1,800. This reduction was made on the basis that the operator did not show "willful negligence" despite the fact that the operator's employees had denied a request by EID to sample the absorber solution (MMD, Informal Penalty Assessment Conference Rept., July 1, 1983).

In interviews, Director Kelley stated that MMD did not take enforcement action when an MMD inspector first observed the violation on September 24th because additional sampling and chemical analysis of the absorber solution could have indicated additional violations. He told the authors:

> Our policy is to wait and see how many violations there are before we issue the NOV because we have so much paperwork. We wanted to see if the pollution would show up anywhere else, like reach the San Juan River.

According to Mr. Kelley, the Division "caught the violation before environmental damage had occurred." However, by all other indications, the dumping -- and MMD's failure to require the operator to minimize seepage of the absorber solution by quickly removing the material -- may have serious effects on future land uses on and off the permit area. As the assessment conference report for the violation explained:

> [T]he potential for downward percolation [of the absorber solution] could potentially and probably . . . damage one or more groundwater aquifers in the permit area. This localized pollution could potentially migrate down-gradient and with time ultimately move beyond the permit boundary. (MMD Informal Assessment Conference Rept., NOV 079, May 5, 1983.)

The permit area and nearby lands may never be returned to productive uses, such as grazing, that existed prior to mining because:

> [T]he chemical content of the dumped liquid would ultimately (following reclamation) degrade water from wells drilled . . . for stock water or irrigation (Id.).

In fact, residents living downstream from the power plant and adjacent mine have experienced serious problems with their water. On August 31,1983 eleven ranch families filed notice of their intent to sue under the Clean Water Act; they are seeking an injunction to prohibit additional discharges of polluted water from the San Juan Generating Station and to have fines levied for violations that occurred in 1979-82. They allege that their ranch operations have been hurt by discharges that contaminated groundwater supplies, harmed livestock, and damaged pasture lands (Albuquerque Journal, Sept. 1, 1983).

SUMMARY

Review of the MMD records indicates that New Mexico does not have a functioning inspection and enforcement system for coal mining. Although MMD does conduct inspections, their quality is poor. Inspectors rarely document observations and take samples and measurements nor do they take enforcement actions on violations. The Division relies primarily on an informal, illegal, and ineffective system of warnings to operators to clean up violations. When MMD does take the rare enforcement action, abatement is often delayed and the environmental damage may not be repaired. Fines are reduced without cause and the Division does not make use of Cessation Orders, patterns of violation, show cause orders on patterns of violation, and individual and corporate officer liability.

MMD took enforcement action on only three of the ~~30~~ 32 violations that were documented in inspection reports for the five sample mines. Since many inspections were extremely brief, were "windshield inspections" conducted by driving around the mine site, and were poorly documented in inspection reports, it is likely that many more violations actually existed which were not noticed or documented by inspectors. Unauthorized dumping of hazardous waste at the San Juan mine has created the likelihood of serious groundwater contamination after final reclamation of the mine site. Although many violations for which MMD failed to issue citations at other mines may or may not have resulted in immediate, visible environmental degradation, repeated violations such as lack of runoff control and topsoil protection are likely to have long-term cumulative effects on reclamation and water resources.

MMD's practice of having inspectors meet with MMD administrators before formal or informal enforcement actions are taken, and before inspection reports are written, has several detrimental effects: abatement times are extended because of delays in taking formal enforcement actions, the authority of inspectors in the field is dramatically reduced, and MMD administrators are allowed to control or circumvent the formal enforcement mechanisms established in the state's approved program.

The discretionary authority of the MMD Director has been exercised in a manner that has prevented meaningful penalties from being levied to deter violations. Of the 15 NOVs that were issued during 1982, only three resulted in fines. Both the past and the current MMD Director have followed a clear policy of not levying fines sufficiently high enough to deter violations. In at least one case, penalties were reduced significantly for rapid compliance although the violation had, in fact, not been abated.

In sum, MMD's inspection and enforcement system seems to serve only the narrow interests of those operators who choose to mine with little regard for the law and protection of health, safety and the environment. In fairness, it should be stated that the present New Mexico Governor and his aides had the misfortune to inherit this system from the previous administration early in 1983. However, unless serious reforms are undertaken quickly to completely overhaul the system, this administration must also share the responsibility for its perpetuation.

NORTH DAKOTA

BACKGROUND

Coal mining in North Dakota is regulated by the Reclamation Division of the Public Service Commission (PSC). The PSC consists of three Commissioners elected to six year terms, which are staggered so that an election for one seat is held every two years. In addition to regulating coal mining, the PSC also regulates utilities, railroads, industrial siting, and auctioneers. Because the PSC wields a significant amount of regulatory responsibility and power, interest in PSC elections is high, and the PSC operates in a much more overtly political atmosphere than the coal regulatory agencies in other states. On a daily basis, North Dakota's inspection and enforcement program is administered by the Reclamation Division, whose Director is appointed by the PSC. The Division is empowered to make all decisions regarding inspection and enforcement without consulting the PSC, although the Commission makes final penalty assessments and can overrule the citations issued by the Reclamation Division. Division staff members are responsible for both conducting inspections of mines and the technical review of permit applications. In 1982 the total cost of the Division's program was about $556,121 and OSM grants covered 58 percent of this cost.

OSM conditionally approved North Dakota's regulatory program on December 15, 1980. State legislation necessary to satisfy two of the thirteen conditions for approval has not yet been enacted. One of the unmet conditions is the requirement that operators must report all the citations they received nationwide for the three years prior to permit application. This requirement was included in SMCRA in order to allow the public and state authorities to review compliance in other states by operators wanting to mine in their state. Although analysis of the state's failure to satisfy this requirement is beyond the scope of this study, it should be noted that this provision in SMCRA (Sec. 510(c)) was intended to provide additional incentive for operators to prevent violations from occurring. Operators with outstanding violations that are not in the process of being corrected or with a demonstrated pattern of violations cannot receive a permit to mine.

Coal mining takes place in the western counties of the state, and the eleven strip mines produced 17.8 million tons of lignite coal in 1982. Five mines were selected for the sample used in this study: the Center mine, operated by Baukol-Noonan, Inc.; Falkirk Mining Company's Falkirk mine; the Glenharold mine operated by Consolidation Coal Company; the Indianhead mine owned by North American Coal Corporation; and Knife River Coal Mining Company's South Beulah mine.

INSPECTIONS

Frequency

The Reclamation Division conducted 90 percent of the required number of complete inspections at the sample mines and exceeded the required number of partial inspections by 70 percent. Four or more complete inspections were conducted at three of the five sample mines. Only two complete inspections were conducted at the Falkirk mine, however, and only three were conducted at the Center mine.

The large amount of partial inspections conducted is due to the Division's policy of conducting bi-weekly and sometimes weekly inspections at the more active mines during the spring and summer months. However, exceeding the required number of partial inspections does not relieve the state of its responsibility to conduct four complete inspections at every mine each year. As OSM has explained:

> [T]here is no assurance that several partial inspections will encompass a review of all applicable performance standards . . . . Thus, several "partial" inspections will not, nor did the Act contemplate that they would, satisfy the requirement for "complete" inspections". (Fed. Reg. Vol. 47, p. 35622, Aug. 16, 1982.)

Completeness

Inspection reports for North Dakota contain lengthy narrative descriptions of mine activities and problems at the different areas of each mine. Although these reports indicate that inspectors physically inspect all the areas of each mine during complete inspections and appear to inspect most of the major "problem" areas of each mine during partial inspections, the reports do not document that inspectors check for compliance with all applicable regulations. Inspection reports and interviews indicate that the Division staff does not appear to be well versed with the specific requirements of the state's approved program and do not adequately check for compliance with other regulations such as design standards and discharge limitations for sediment ponds. (See "Uncited Violations" and "Sediment Control" sections.)

The Reclamation Division has issued a set of inspection guidelines that contain all applicable regulations to be checked during partial and complete inspections, as well as the inspection procedures to be followed, according to Nirander Safaya, who held the position of Division Inspection Supervisor during 1982. These guidelines are based on regulatory requirements, as well as "common sense," according to Mr. Safaya. For example, the guidelines instruct inspectors to review past inspection reports before making each inspection and to review all problems noted in previous inspections at the mine site. Mine permits and monitoring data are reviewed in depth at the PSC office, according to Division officials, and inspectors check during each complete inspection to see that these documents are kept at the mine site. Although Reclamation Division administrators agreed to furnish a copy of these guidelines for use in this study, a copy was not made available as requested by the authors.

Inspection Reports

Review of the record indicates that North Dakota has established essentially a double reporting system. In addition to the formal inspection reports, the Division documents many violations and problems that have the potential to become violations, in separate letters to operators, and much of this essential information is omitted from the inspection reports. Several letters reviewed by the authors were much longer and more detailed than the reports for the inspections about which the letters were written. The October 21, 1982 inspection report for the Glenharold mine, for example, contained a very limited description of some observed problems and violations as well as a note saying that a "letter will be sent on pond maintenance and operations procedures". (Glenharold, 10/21/82.) A letter -- three and a half single spaced pages -- describing 18 violations and problems that were observed by inspectors, was not sent until March 4, 1983 -- almost five months after the inspection.

Letters sent by the Division to operators document observations that must be fully described in inspection reports, which are open to review by the public, OSM, and other Division staff members. Although the Division is required to send inspection reports to OSM, letters to operators were not sent to OSM, according to the Casper Field Office staff. In addition, although the Division has agreed to send copies of inspection reports to the Dakota Resource Council (DRC), a citizen's group actively involved in mining issues in North Dakota, none of the letters sent to operators was included with the inspection reports sent to DRC.

According to OSM officials interviewed by the authors, Division inspection reports were not sent to OSM in a timely manner and several months often elapsed before reports were sent. Thus, OSM was unable to promptly review and investigate problems noted by state inspectors. OSM requested that the Division send inspection reports, as well as the letters to operators regarding inspections, within two weeks after inspections were conducted. Most inspection reports are now being received within that time, according to Gene Filer, Inspection Supervisor for the Casper Field Office. However, Mr. Filer was unable to confirm that all other information regarding inspection and enforcement was being sent as requested by OSM.

ENFORCEMENT

Violations

At the five mines in the sample, a total of 96 violations were described in the 1982 inspection reports. However, formal enforcement action, as required by the state's approved program and state law (NDCC, Chap. 38-14.1-28), was taken for only two, or 2 percent, of the violations observed by inspectors. One NOV was issued by the Reclamation Division, and one Judicial Complaint was filed by the state Department of Health for an effluent violation, for which both agencies share enforcement responsibility. No cessation orders were issued nor any proceedings conducted on patterns of violation. Table 1 summarizes this information for the five sample mines.

Uncited Violations

Approximately one-third of the violations involved failure to stabilize topsoil stockpiles, undisturbed areas, and reclaimed areas to minimize erosion. Another third of the violations involved failure to adequately maintain sediment ponds, berms, diversion ditches and other surface water management facilities. Five uncited violations involved discharging water from sediment ponds that exceeded effluent standards for suspended solids.

TABLE 1. Violations Observed and Enforcement Actions Taken at the North Dakota Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATIONS
Center	14	0	0	0	0
Falkirk	7	0	0	0	0
Glenharold	27	0	0	0	0
Indianhead	30	0	0	0	0
South Beulah	18	2*	0	0	0
TOTAL	96	2	0	0	0

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*Includes one Judicial Complaint filed by the North Dakota Department of Health for a violation observed by Reclamation Division inspectors.

The remaining violations included failures to post blasting and topsoil signs, and failure to make permits, soil surveys or water monitoring data available for inspectors at the mine site.

Inspection reports and interviews with the Reclamation Division staff indicated that enforcement action was not taken on most violations because inspectors were not aware of, or chose to ignore, the specific requirements of North Dakota's approved program. In some cases, citations were not issued because the violation was "accidental" or because the inspector erroneously believed that environmental harm must occur before enforcement action is taken.

One of the most important provisions of North Dakota's approved program, like the 1982 OSM regulations, requires operators to fill, reseed and stabilize erosional gullies and rills over nine inches deep on all areas which have regraded or respread with topsoil. Inspectors must require operators to fill, reseed and stabalize erosional gullies of lesser size if such erosion would result in additional erosion and sedimentation, and prevent successful revegetation and reclamation. (NDAC 69-05.2-15-06.)

In an interview, Mr. Safaya, was specifically asked whether the state's regulations included this requirement concerning areas where the topsoil has been put back. He stated that they did not, and operators are required to fill, reseed and stabilize erosion only when specifically requested by the Reclamation Division. Indeed, inspection reports indicate that state inspectors did recommend that excessive erosion be repaired, rather than issuing NOVs for erosion exceeding the regulatory limit. (See "Warning" section.) In one case, the Reclamation Division instructed an operator to repair rills and gullies when they reached 12 -- rather than nine -- inches in depth or width. This inspection report stated that:

> [T]he rills noted in previous inspections have not been repaired and appeared to be enlarging with each significant rainfall. Consol was instructed to attempt stabilization of

> the newly respread area by bale diking any rill that exceeds 12 inches in depth or width. This action should stabilize the large rills until such time as repairs can be undertaken. (Glenharold, 6/30/82.)

The Reclamation Division's failure to enforce this requirement -- for whatever reason -- seriously compromises its ability to achieve the environmental protection this rule was designed to achieve. OSM adopted the rule in federal regulations because nine inches is "the maximum depth that can be stabilized by most grasses, since a large portion of their roots occur in this surface layer." OSM specifically stated that "[t]o delete the requirement entirely, or increase the depth to 12 inches, could result in excessive loss of plant growth media by erosion." (Fed. Reg. vol. 44, p. 5231,Mar. 13, 1979.) In addition, a specific limit -- over which point erosion on topsoiled areas is a violation, per se -- was included in regulations to establish a point at which operators must assume responsibility for fixing erosional problems before they are pointed out by inspectors. Under a system in which operators fix erosion only as required by inspectors, the responsibility for ensuring that mining is conducted in a way that minimizes adverse environmental impacts is placed on field inspectors, rather than on the mine operators. This directly contradicts one of the goals of SMCRA that operators take responsibility for preventing damage and protecting resources during their mining activities.

In several cases, inspection reports clearly describe violations but explain that enforcement action was not taken because, in the inspector's judgment, significant environmental harm had not occurred or the violation appeared to result from an "accident." For example one report explained that:

> [A]lthough slight mixing of top and subsoil material has occurred only in a small portion of the area, the mine personnel had adopted a rather risky procedure to extricate . . . stuck caterpillars and, without regard to the wet ground conditions, proceeded in a manner that could have resulted in a significant environmental damage to an otherwise undisturbed area . . . . Since, in the present case the extent of significant disturbance appeared to be small and resulted out of an "accident," no further action is being taken. (PSC, South Beulah, 4/8/82.)

The operator's good, bad, or indifferent intentions are irrelevant to whether a violation occurred, and enforcement action must be taken on all violations under the state's approved program. The operator's intent is, however, considered in the penalty assessment. Furthermore, enforcement actions and penalties help deter future violations by making operators more diligent in supervising employees to prevent violations, to carry out necessary maintenance chores, and to repair damages quickly when they do occur rather than letting them persist until discovered by an inspector. For example, less than six months after the violation described above took place, an almost identical violation occurred at the same mine.

> Along the east edge of topsoil stockpile no. 104.1, large ruts were evident which, according to mine personnel, occurred when a rubber tired dozer became stuck in saturated materials. Some minor mixing of topsoil

> (including stockpiled topsoil) and subsoil was apparent. The disturbance was confined to an area 10 feet wide . . . by about 150 feet long. Mixing was only apparent along the southern 30 feet where the wheel ruts were 3 feet deep. (South Beulah, 10/15/82.)

Again, no enforcement action was taken and the inspector merely advised:

> Knife River personnel should be made more aware of the requirements of Rule 69-05.2-15-03(2) which specifies that no unnecessary disturbance shall occur to stockpiled plant growth material. (Id.)

In interviews, inspectors said one reason they did not take enforcement action in many situations is because there are many "gray areas" in which they find it difficult to determine if on-the-ground conditions constitute actual violations. Several inspectors and the Reclamation Division Director, Edward Englerth explained that the Division is hesitant to issue NOVs if the Division is not absolutely certain the violations are legally valid and will not be vacated by the PSC in response to an appeal by the operator. One example of a violation that is difficult to determine was given by an inspector. He stated that it is difficult to determine when sediment ponds have reached the maximum amount of accumulated sediment allowed, or 60 percent of designed sediment capacity. However, according to Thomas Ehmett, OSM Inspector Supervisor, this can be readily determined by referring to markers in the sediment ponds, or by referring to illustrations in the mine permit. (See also "Sediment Control" section.)

In addition, several staff members gave a second reason for not taking enforcement action on many violations. They stated that issuing NOVs would make operators less cooperative in abating problems which are not yet violations. As one inspector explained:

> It's not a matter of giving them breaks, but we don't want to lose their cooperation. They often fix problems that aren't violations yet at our request. If we go by the black and white of the regulations, we will lose that cooperation.

This approach of going along with violations in order to get along with the operators ignores the fact that a recalcitrant operator faces severe penalties -- including loss of the mining permit -- under North Dakota's regulatory program.

Warnings

Instead of issuing NOVs and COs, inspection reports indicate the Reclamation Division generally treats observed violations in one of two ways: either violations and required abatement actions are merely noted in inspection reports, or a separate letter is sent to the operator warning that formal enforcement action may be taken if the violation is not abated.

Most violations observed by inspectors are simply noted in inspection reports. For example, the June 30, 1982 inspection report for the Glenharold mine stated that:

> It was noted that a minor spoil slide has occurred at the west end of the woody draw on the north boundary . . . . The bale dike installed at this location held most of the spoil and little entered the woody draw. It was noted that repair and/or reenforcing of the bale dike would be necessary to assure this draw is not degraded by further sliding.

In other cases, the Reclamation Division did send letters to operators warning them that NOVs would be issued if violations were not abated. In an interview, one official of the Division stated that letters sent to operators are "a way of getting [the operators'] attention that specific problems may not be violations, but have the potential of becoming violations if they do not take action." In many cases, the official said, letters address "the gray areas, in which the regulations are not 'cut and dried'." However, several of the letters reviewed by the authors did describe clear violations, in addition to describing problems which had the potential to become violations. One letter, for example, noted that "gullies and rills [had] been allowed to develop" in an area under reclamation, despite the requirement to take steps to prevent such erosion from occurring. As the letter explained,

> [P]ursuant to NDAC 69-05.2-15-04-3(c) it is the responsibility of [the operator] to take all possible measures to protect suitable plant growth material from wind and water erosion before sufficient vegetative cover is established. (Id.; See also NDAC 69-.05.2-15-03.)

In addition, the letter warned the operator to begin correcting the erosion "immediately," but the Division took no enforcement action. The letter also clearly indicated that the operator had not taken required measures to prevent such erosion from occurring. According to the letter,

> [I]t is . . . evident that Husky Industry has made little effort to adopt any preventive measures that could have minimized the chances of further erosion from these topsoiled areas. (Letter from Edward Englerth to Kent Hudson, Husky Industries, Inc., June 16, 1982.)

In addition to describing problems that were not violations, several other letters noted numerous violations that inspectors had observed three to four months before the letters were sent to operators. For example, two letters dated March 4, 1983 noted "specific problems" which were found during inspections conducted in late October and early November of 1982. (Letters from Reclamation Div. to Falkirk Mining Co. and Consolidation Coal Co.) The letter concerning Consolidation Coal's Glenharold mine, noted 19 "specific problems found at the different pond sites," including nine situations which were clearly described as violations for which the Division is required to issue NOVs. The record indicates that the operator has a history of repeated failures to maintain the mine's sediment control system, not merely isolated "problems" that could develop into violations. However, the Division took no enforcement action against the operator in 1982.

Sediment Control

Design and performance standards for sediment control were among the violations the Division most frequently observed but did not cite. Although violations for failure to minimize sediment may appear insignificant individually, increased sediment can have serious cumulative impacts on the environment outside the permit area. Excessive sedimentation can destroy aquatic life, increase water treatment costs, increase the danger of flooding, and reduce the land's productivity.

Sediment ponds frequently contained excessive sediment because the operator had failed to adequately maintain them. The accumulated sediment must be dredged and removed so the ponds can catch and hold the runoff from future rain and snow storms and the sediment can settle out. As mentioned above, the 1982 Inspection Supervisor said that it is difficult to enforce the requirement that ponds not be allowed to get 60 percent full of sediment because "it's almost impossible to determine exactly how much sediment is in a pond". (See also "Uncited Violations" section.) In several cases, however, inspection reports indicate that inspectors had determined that because sediment ponds had not been maintained as required, discharges would violate effluent standards. Still, no enforcement action was taken. For example, one inspection report noted that:

> [T]he current settling efficiency of this pond is seriously in doubt . . . . It is apparent that the sediment accumulation in this pond has exceeded the maximum allowable limit." (South Beulah, 10/15/82.)

Instead of issuing an NOV, as required, the Reclamation Division inspector recommended that:

> [The operator] should remove the accumulated sediment as soon as weather conditions permit. The remaining ponds in the central drainage may contain sediment volumes in excess of the amount allowed . . . . The Reclamation Division strongly recommends that all ponds in the central drainage be inspected by mine personnel to determine whether sediment removal operations are warranted. (Id.)

At the time of the November 23 inspection -- five weeks after the violation was first called to the operator's attention -- the sediment pond still had not been cleaned. (See also Center, 3/31/82 and 9/9/82; and Glenharold, 7/14/82.)

Inspection reports also indicate that discharge standards -- as well as maintenance requirements -- for sediment control were not checked or enforced on many occasions. For example, pond discharges are not routinely sampled and analyzed to check for compliance with effluent standards. According to a Division inspector, water samples are taken if discharges appear "excessive or marginal" based on visual observation. On at least two occasions, however, inspection reports do not indicate that effluent samples were taken even though discharge from ponds appeared to exceed limits for sediment. (Indianhead, 7/8/82 and 10/27-28/82.) In addition, samples of water discharges are necessary to confirm visual observations, identify effluent problems which may not be detected by visual examination (such as excessive iron content), and collect evidence needed to take enforcement action when violations are identified.

During four inspections, analysis of discharge samples indicated that effluent standards for total suspended solids (TSS) were not met, but no enforcement actions were taken. The four samples contained TSS of between 437 to 200 milligrams per liter, compared to the maximum allowable TSS of 45 milligram per liter. (South Beulah, 4/27/82; Center, 3/11/82 and 10/20/82; and Indianhead, 10/12/82.)

On one occasion, the Reclamation Division ordered an operator to stop discharging from three ponds which appeared not to meet effluent standards upon visual observation. Although violation of effluent standards had been documented and brought to the operator's attention at the previous inspection, no formal enforcement action was taken. (Indianhead, 10/12/82 and 10/27-28/82.) According to the inspector involved, an NOV was not issued because the ponds had just begun to discharge and the operator shut off the discharge as requested by the inspector. Although the inspector who ordered these ponds to stop discharging considered this "a type of enforcment action," the state's approved program, like SMCRA, requires issuance of an NOV or CO in such situations to initiate the penalty assessment process. During the penalty process administrators can decide if a monetary penalty is warranted to deter future violations and to establish a history of violations, which increases the amount of penalties levied for future violations at the mine and can effect the operator's authority to continue mining, should a pattern of serious violations occur.

Formal Enforcement Actions

Two citations were issued at the mines in this sample during 1982. Although the inspection requirements and performance standards of North Dakota's approved program -- like federal regulations -- are designed to prevent environmental harm from occurring, significant environmental impacts had already occurred by the time both enforcement actions were taken at the sample mines.

NOV 8202 was issued at the South Beulah mine for failure to control discharges from a sediment pond in a manner that minimized erosion. According to the October 15, 1982 inspection report, by the time the NOV was issued:

> [D]ischarge from the impoundment has resulted in severe headcutting below the principle spillway. This erosion has occurred along the length of the slope from the pipe outlet to the bottom of the draw, a distance of approximately 200 feet . . . . The maximum width . . . in the center is under 6 feet. The depth of the erosion feature varies considerably depending upon location. At one point, a 15 foot vertical drop exists. The depth of the cut has resulted in not only topsoil and subsoil being eroded, but overburden and a portion of the coal stringer seam as well.

Much of the environmental impact resulting from this violation was irreparable, as NOV 8202 noted that "it is not possible to recover the eroded topsoil and subsoil material."

A Judicial Complaint was also filed by the state Health Department against the South Beulah mine after the Reclamation Division's review of surface water monitoring records revealed that effluent standards for sediment and iron had been violated seven times during the first quarter of 1982. The water analyses on which the Complaint was based showed the sediment content to be two to nine times the allowable limits and the iron content ranged from three to almost four times the allowable level. In addition, the complaint charged the company with failing to submit discharge monitoring reports on four occasion during 1982.

Abatement

Due to the lack of enforcement in North Dakota, the Division attempts to obtain abatement of most violations by issuing recommendations and instructions to the operator at the mine site and in inspection reports. Frequently, the instructions do not state deadlines or only give vague directions, such as "as soon as possible" (Center, 3/11/82); "when weather conditions permit" (Glenharold, 6/30/82; Center, 3/31/82; and South Beulah, 10/15/82); or "when personnel are available" (South Beulah, 4/27/82).

Inspection reports indicate this informal approach did not achieve prompt abatement of violations. For example, the April 27, 1982 inspection report for the South Beulah mine stated that:

> As noted in previous inspection reports, water being pumped from the pit was eroding a portion of the embankment created for control of runoff from the bottom ash disposal site. It was observed during this inspection that no measures had been implemented to protect this embankment from the erosionary effects of pumped water. [The operator] indicated that when personnel are available, this embankment and drainageway would be repaired.

If problems are not abated promptly, the potential for or extent of environmental damage is increased. For example, at the Glenharold mine, the May 26, 1982 inspection report noted that erosional rills needed to be fixed. By the June 30 inspection -- over one month later -- it was noted that the "rills noted in previous inspections have not been repaired and appear to be enlarging with each significant rainfall." In another case, erosion was allowed to reach the point where a safety, as well as an environmental, hazard was created. A large "washout" was noted on an access road embankment at the Center mine in the December 16, 1982 inspection report, which stated that:

> [I]t was apparent this erosion had the potential to become a safety problem and accompanying mine personnel were instructed to repair the washout as required by Sec. 69-05.2-24-06, NDAC.

By the January 26,1983 inspection, the erosion had not been repaired but "mine personnel indicated that the repairs [would] be made as soon as weather conditions permit." By the March 4, 1983 inspection, however, the problem had still not been abated and had clearly become a safety hazard:

> [T]he access road . . . was partially eroded away. This site had been previously staked as a warning to traffic, but the stakes were not easily visible. [The operator] was advised that this was a hazardous situation and additional remedial measures were needed. [The operator again] indicated that expeditious repair of this road would commence once weather conditions improved.

This erosion and safety problem was still not abated at the time of the April 19, 1983 inspection -- over four months since the washout in the road was first noted by inspectors.

Interviews, as well as inspection reports, indicate that the Reclamation Division staff places little emphasis on abating situations described as violations in inspection reports. According to one inspector, the difficulty of abating many "problems" during adverse weather conditions makes it difficult to impose specific dates for abatement. "In a lot of situations, they are a better judge about when to fix something than we are," explained the inspector. "If the problem is very minor, it doesn't matter if it gets fixed this week or next year." Similarly, several letters instructing operators to fix and maintain their sediment control systems were sent four to five months after inspectors first observed these "problems," many of which were clearly described as violations of the state's approved program. The Director of the Reclamation Division, Edward Englerth, stated that these letters were not sent in the fall of 1982, when the problems and violations were observed, because "most of these problems were not likely to worsen over the winter, and we felt that no damage would occur as long as they were taken care of by spring [snowmelt]."

PENALTIES

Penalties for citations issued by the state are initially proposed by the Reclamation Division staff, and final penalties are levied by the three PSC commissioners. The PSC assessed a fine of $1,500 for the one NOV issued by the Division at the sample mines during 1982. NOV (8202) was issued for failure to construct erosion protection below a sediment pond discharge at the South Beulah mine. The fine levied by PSC was comparable to the average fine of $1,691 levied for 50 NOVs issued by OSM in western states from 1979 to 1981. No proceedings were held on patterns of violation or charges brought on individual and corporate officer liability.

A Judicial Complaint filed by the Department of Health for effluent violations at the South Beulah mine resulted in another penalty of $10,000 payable immediately, with another $20,000 fine suspended on the condition that the company did not commit a major environmental violation at the same discharge points within the following year.

SUMMARY

Review of the North Dakota records indicates that North Dakota does not have a functioning enforcement system for coal mining. Although the PSC's Reclamation Division conducted frequent partial inspections at the sample mines in 1982, the required number of complete inspections was not conducted and inspectors did not review the mine's compliance with all applicable regulations.

Several factors contributed to the failure of the PSC's inspectors to cite almost every violation they observed at the sample mines: the Reclamation Division staff's lack of familiarity with the state program, the substitution of warnings for formal enforcement actions, the apparent lack of training for inspectors to be able to recognize violations, and the fear that making use of enforcement and penalty tools might make operators uncooperative or reversed by the Public Service Commission.

Serious problems have resulted from the Division's failure to enforce the provisions of its approved program on water quality protection, erosion and sediment control, and topsoil protection. Operators were allowed to repeatedly violate these provisions and, consequently, the prospects for successful long-term reclamation are extremely questionable. Lands criss-crossed with gullies and stripped of topsoil simply cannot be returned to productive use without decades of intense effort, but that is the destiny for much of North Dakota's mined lands if corrective action is not taken soon.

The ultimate responsibility for corrective action rests with the Public Service Commission and the voters who choose its members. Unless the Commission makes deep and serious reforms to enforce the law against irresponsible operators, there is little hope for North Dakota to achieve an effective state regulatory program.

UTAH

INTRODUCTION

Before the passage of SMCRA, the Utah law contained few enforceable provisions and a regulatory system existed in name only. Operators were not required to post adequate reclamation bonds, mining and reclamation plans contained little actual planning, and performance standards were weak and largely unenforced. After the passage of SMCRA, the State enacted a new law, issued new regulations, and obtained OSM's approval of its program in January of 1981. Utah's program is administered by the Division of Oil, Gas and Mining (DOGM) under the Department of Natural Resources and Energy. Policy, rule-making, and adjudicatory hearings are the responsibility of the Oil, Gas and Mining Board, which is made up of representatives of coal, mineral, oil and gas, and environmental interests. Its seven members are appointed by the Governor and confirmed by the Senate. In 1982, the Utah program cost about $1 million, 98 percent of which was provided by OSM through grants.*

Coal mining is concentrated in the east central area of the state in the Book Cliffs, Emery, and Wasatch Plateau coal fields. All currently producing mines in the state are underground mines, and most operations are located on federal lands with small acreages of state and private lands within the mine boundaries. In 1982, 25 underground mines produced 18 million tons that primarily supplied power plants and steel mills. Of the 33 active and inactive mines, the authors selected 10 as a representative sample for intensive review of the inspection and enforcement records. These are the Coop, Deer Creek, Factory Butte, Geneva, Knight, Price River, Starpoint, Sunnyside, Trail Mountain, and Wilberg mines. All are underground mines except Factory Butte, a strip mine.

INSPECTIONS

Frequency

In 1982, the Division conducted 100 inspections at the ten mines in the sample, or 83 percent of the 120 required. Partial inspections totaled 72, or 89 percent of the required amount, and complete inspections totaled 29, or 72 percent of the required amount. In interviews, inspectors said severe winter weather prevented some inspections, but most of the shortfall (12 of 20 inspections) occurred because no inspections were conducted at the Factory Butte mine -- a strip mine whose owner, the Dirty Devil Mining Company, declared bankruptcy and abandoned the site in 1979.

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*Unlike the other five states in the study, Utah does not have primary inspection and enforcement authority for mines on federal land as well as on state and private lands. That authority is still the responsibility of the Office of Surface Mining. OSM has refused to sign a cooperative agreement transferring the authority to the state because OSM Director James Harris found DOGM to be using "improper practices" in implementing its program. (Letter to Utah Governor Matheson, Mar. 11, 1982.) Despite Utah's inability to qualify for a cooperative agreement, OSM gives additional grant money to the Division that only agreement states are supposed to receive. Thus, it appears that the Governor has little incentive to correct the problems identified by OSM.

The failure to make the required inspections at the Factory Butte mine can be attributed to the misunderstanding of Division officials of their legal obligations. In interviews, Division staff members stated that they believed there was no way to force the company to correct the many violations that we occurring and to reclaim the area because the company had declared bankruptcy and abandoned the site. Thus, they conducted no inspections. However, declaration of bankruptcy does not absolve a mine operator from his legal responsibility to comply with the performance standards and reclamation responsibilities. It is extremely important to cite violations and establish a record of noncompliance so that a court order can be obtained to force the operator to take action. In addition, once a record of noncompliance is established, the operator will not be able to obtain another mining permit and repeat the "rape and run" behavior in another state, and criminal proceedings can be brought against any corporate officials "who willingly and knowingly authorized" violations of the law. (Sec. 40-10-20, UCA 1953.)

Completeness

The Division's inspection form consists of several pages of narrative divided into sections according to topic and regulation number, such as "771 Permits," "817.21-.25, Topsoil,"and "817.41-.45, Hydrologic Balance." No checklist of requirements is used. This format is identical to that used in OSM inspection reports prior to 1981.

Most of the inspection reports were well written and informative, and they showed evidence that most of the inspectors had a good working knowledge of the regulations, site conditions, and proper mining methods. All inspections termed complete appeared to be complete ones with the exception of the reports written by one inspector who no longer works in that capacity. These reports were conclusionary, stating little more than the mine was inspected and all was well. (See, for example, DOGM, Sunnyside, 4/6/82.)

Although many of the reports do note when water samples were collected for analysis, other types of evidence and tests are not mentioned. For example, photographs, slope measurements, and soil or overburden samples are neither described nor referenced in most inspection and enforcement files. However, the inspectors stated in interviews that such evidence was collected. Use of a checklist in addition to the narrative could help ensure that compliance with all appropriate items is reviewed at each mine.

ENFORCEMENT

Violations

Of the 126 violations described in the inspection reports for the 10 sample mines, the Division issued 37 Notices of Violation (NOVs) and 6 Cessation Orders (COs). Thus, enforcement action was taken on 34 percent of the violations observed by inspectors in 1982. Of the 43 citations issued, 32 or 74 percent were issued on the site, including all cessation orders. No proceedings on patterns of violation were initiated.* This information is summarized in Table 1.

Utah inspectors issued NOVs for violations at the sample mines in the following categories: failure to protect water quality, control runoff, and prevent erosion (26) improper disposal of non-coal waste (3); failure to salvage, store or protect topsoil (2); lack of required water monitoring data (2); failure to carry out the permit conditions (1); improper disposal of coal waste (1); allowing coal waste fires (1); failure to post proper signs and markers (1). Four COs were issued to operators who failed to abate NOVs and two for situations that threatened imminent environmental harm.

The percentage of violations cited in Utah is over twice as high as any other western state. However, Utah's performance has dropped considerably from the 42.6 percent record established in the previous study. (See "Stripping the Law on Coal," Public Lands Institute, 1980.) The reasons for that decline will be described in the following three sections.

Uncited Violations

Inspectors observed but did not take enforcement action on the following types of violations: failure to properly divert water runoff and protect water from contamination (49 instances); failure to abate NOVs (10); improper

TABLE 1. Violations Observed and Enforcement Actions Taken at the 10 Utah Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATION
Coop (Trail Canyon)	8	5	2	7	0
Deer Creek	8	1	0	0	0
Factory Butte	0	0	0	0	0
Geneva	3	1	0	1	0
Knight	2	1	0	1	0
Price River	50	11	0	5	0
Starpoint	11	1	0	1	0
Sunnyside	18	6	2	5	0
Trail Mountain	18	5	2	7	0
Wilberg	8	6	0	4	0
TOTAL	126	37	6	31	0

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*In 1983, an investigation by the Division found that 11 of the state's 33 mines had a pattern of violations. The authors were unable to obtain full information on how many proceedings were held and their outcome but were able to verify that show cause orders were issued on the Coop and Wilberg mines.

disposal of non-coal waste (8); failure to properly construct or maintain sediment control structures (6); lack or perimeter, buffer zone or topsoil storage pile signs (5); failure to properly salvage or store topsoil (3); and violations of miscellaneous regulations. In interviews, inspectors gave two reasons for not citing all violations. First, some inspectors believed that the assessment officer either vacated or refused to levy appropriate fines on a majority of citations. If they had issued more citations, although deserved, they felt the officer would have increased the percentage that he vacated or for which he assessed lower fines. They believed this would result in operators taking less responsibility for compliance. Second, some inspectors said that Division policy did not require them to take enforcement action on all violations unless the violation caused or was likely to cause environmental harm in the near future. They contended that, although this policy was not written, the record of low fines and vacated NOVs was sufficient evidence. While the record does show a pattern of very low fines and a number of NOVs vacated without justification, inspectors are bound by the law to take enforcement action on all observed violations.

Of the uncited violations, 39 or 46 percent of them occurred at the Price River mine. They illustrate the importance of taking enforcement action, if possible, before environmental damage occurs. Throughout 1982, the inspection reports chronicle the operator's repeated failure to construct and properly maintain water control structures, and many of these violations had the potential to cause cumulative environmental damage from erosion, sedimentation, and water pollution. However, no enforcement action was taken when they were first observed; instead 10 of the 11 NOVs were issued after damage had occurred or was highly likely to. For example, one NOV was issued after the operator had intentionally breached a berm. Waste water with an extremely high sediment content of 100,000 parts per million flowed through the breach and into the Price River, a municipal water supply (3/10-12/82). On subsequent inspections, at least 18 violations were observed where the operator had neglected to maintain diversion ditches, berms, and sedimentation ponds, but only three NOVs were issued. In October, once again a berm was breached and muck water and waste escaped and an inspector issued an NOV. How many more violations occurred when no inspector was present to observe them? There is no way to determine that, of course, but the operator had every reason to conclude that he could get away with most violations.

Warnings

The decline in Utah's performance since 1980 can be attributed largely to several procedures established by Division administrators. In 1982, the former Division Director, Cleon Feight, adopted a policy for inspectors to issue warnings, called Notices of Area of Concern (NAOCs), to mine operators. In many instances, these warnings were issued as substitutes for NOVs when violations were observed. On June 4, 1982 the OSM Field Office in Albuquerque informed Director Feight that this practice did not comply with the state's law and regulations and had to be discontinued. (Interview with Robert Hagen, Director of OSM Albuquerque Field Office.) Despite the Division's assurances to OSM that NAOCs would be subsequently issued only as warnings for situations that were not violations, review of inspection reports and interviews with Division inspectors confirmed that at least five were issued after that date for situations which were violations at the sample mines. (See, for example, Geneva, 8/31/82; Price River, 10/7-8, 13/82; Sunnyside, 11/23/82; Trail Mountain, 8/12/82; Wilberg, 9/28/82.)

In interviews, most of the Utah inspectors stated that this responsibility for issuing warnings caused them difficulty in carrying out their inspection duties. The inspectors believed that out of common courtesy they should alert an operator to situations that could become violations -- such as areas that were starting to erode and form rills -- but they also believed that the availibility of written warnings provided a too convenient excuse for the inspector not to take enforcement action on violations committed by operators who were difficult to deal with. One inspector stated:

> The system easily becomes a crutch to the inspector to avoid confronting an operator with a citation for a violation. It's an easy out.

In addition, some inspectors believed that emphasis on issuing warnings could lead operators to neglect their responsibility to assure that mining activities are in compliance with the regulations. One inspector summed up this problem:

> The policy of issuing written warnings about developing problems can put us in the position of being maintenance men. Maintenance is the operator's responsibility. He must always be aware of the daily activities at the mine and keep them in compliance. We should not give him an excuse to say, 'the inspector didn't warn me.'

Another inspector recommended that if written warnings are retained, inspection reports should contain a thorough description of why the situation was not a violations.

Administration Interference with Inspection and Enforcement

Another factor contributing to the decline in Utah's enforcement performance was the increased interference in the inspection and enforcement process by Division administrators, apparently in order to protect operators from receiving citations and paying fines. One inspector described the pressure exerted by the operators:

> Sometimes when I would start to write out a violation, the operator would pick up the phone, call the Director or Assistant Director to complain that I was harassing him. Of course, we both knew that they were sympathetic to his complaints because they were all part of the good old boy network and believed in fixing tickets.

Review of the records and interviews showed that in 1982, the administrative interference increased over previous levels and included ordering inspectors not to inspect certain operations and not to issue citations at certain mines.

The interference included:

1. A written order to two inspectors to stop communicating with the operator's representative and conducting inspections at the Sunnyside mine. It stated:

> This memorandum will serve to inform you formally, in writing, that there is to be no further communication, verbal or written, with John Huefner of Kaiser Steel regarding the Sunnyside Mining Complex. Any problems or complaints should be directed to either Ron Daniels or myself. Also, I do not want you to perform any inspections on this mine until further notice. (Memo from former Director Cleon Feight to Joe Helfrich and Dave Lof, June 18, 1982.)

2. A verbal order to all inspectors not to write NOVs during at least two weeks in June 1982.

3. Assignment of an employee who appeared to lack some qualifications for an inspector's position to inspect mines whose operators had complained about inspectors taking excessive enforcement actions.

4. Verbal and written orders to inspectors not to issue citations for violations occurring at various mines. (See, for example, Memo from Cleon Feight to John Whitehead, Jan. 20, 1983.*)

5. Vacation of enforcement actions without justification by the Assistant Director. (See discussion of examples in the "Penalties" section.)

Apparently these actions had a chilling effect on all inspector activities. One inspector described that effect:

> Many of us felt gun-shy. We tried to reconcile the problems with the operators without issuing NOVs because of all the orders and pressure coming from the administration. It was a terrible time, having our chain jerked every day.

The inspectors stated that morale would have been far worse and the number of enforcement actions even less without the full support of the field inspection supervisor, Joe Helfrich. The record shows that he resisted these actions and refused to pull inspectors from conducting inspections and issuing violations unless he received written orders from the Director or Assistant Director and they took responsibility for the action.

In early 1983, a new Division Director was appointed when Mr. Feight left. The inspectors felt that less administrative interference had occurred since then, and that at the present time the momentum was once again directed toward effective enforcement. The authors interviewed the new Director, James Shirazi, about the coal program, and it appeared that any reduction in interference that may have occurred came about because of his indifference to the enforcement program, rather than through positive momentum. He stated:

> The coal regulatory system does not have serious problems in Utah. I have other priorities.*

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*Mr. Shirazi resigned in the fall of 1983 and the new Director is Ms. Diane Nielsen.

Review of the records confirmed that no written instructions not to inspect or cite violations had been issued since January 1983. However, the assessment practices did not appear to have changed substantially, and some inspectors stated they still did not take enforcement action for all violations because they had "been burned too many times."

Abatement

Prompt issuance of enforcement actions during inspections ensures that abatement can begin immediately. Division inspectors achieved a good record, issuing 74 percent of the enforcement actions during the inspection. They issued the remaining 26 percent an average of six days after the inspection; the longest delay was 14 days. Clearly, Utah inspectors had authority to issue notices of violation and cessation orders at the mine site, and, unlike state inspectors in Colorado, Montana, New Mexico, and North Dakota, they consistently used their authority.

Interviews and review of the records confirmed that the Utah inspectors had been specifically trained in the proper preparation of NOVs and COs, collection of evidence, and presenting testimony in enforcement proceedings. Moreover, they had been entrusted with the responsibility to carry out these duties. The field inspection supervisor stated:

> We train the inspectors to observe, make the decision and issue the citation at the site. In questionable situations, they may call the office and I'll explain the options I see, but the decision is theirs. Whatever their decision, I'll back them all the way. For the regulatory system to work, the inspector must use his enforcement authority because it's the inspector who represents the program and its goals to the operator on a daily basis.

Most of the abatement deadlines set by Utah inspectors in NOVs and COs appeared to have been met met and enforcement action usually was taken when they were not. However, records were lacking to confirm that all violations were abated and formally terminated. This may have resulted from both a poor record keeping system and the failure, in some instances, to confirm that the violation was actually corrected.

The follow-up inspections that were made to confirm that operators had abated violations as specified in NOVs and COs were conducted within an average of four days after the end of the specified abatement period -- a good record. However, two of the follow-up inspections did not occur for 54 days and 17 days beyond the end of the abatement period. (See Sunnyside mine, NOV 82-4-3-3; and Price River, NOV 82-4-9-1.)

In addition, when operators failed to abate NOVs, COs were not always issued. For example, NOV 82-1-10-1 was issued to the Coop mine on August 19, 1982, after the operator failed to abate NOV 82-1-3-4 issued on February 19. The original citation was for improper handling of waste and equipment. When the first violation was not abated within the deadline, a CO should have been issued, not an NOV. On the next inspection, the inspector found that the operator had failed to take the corrective action specified in the second NOV and issued a CO (CO 82-1-3-1, Oct. 6, 1982). However, no record could be found that a follow-up inspection was made to confirm that the operator had properly corrected the CO.

Utah inspectors also established abatement dates for Notices of Areas of Concern. However, inspections to review compliance with these dates did not occur in a timely fashion, and often the abatement, if it occurred, was not noted in the inspection report. For example, three of these notices were issued in 1982 at the Sunnyside mine, and two of the three were violations (NAOC 82-4-1-2, #2 and 82-6-2-2). No records could be found that these two had been abated.

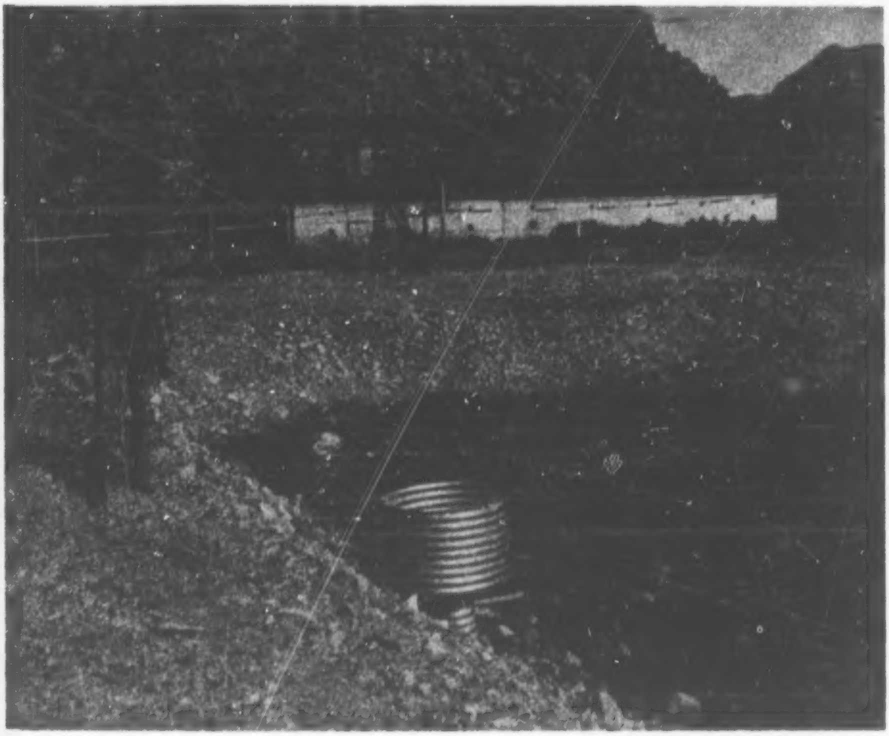
Despite the heavy administrative interference in the enforcement system, the Utah inspectors were able to achieve major on-the-ground reforms in mining practices. The recent events at two mines in the sample illustrate that diligent enforcement efforts by dedicated inspectors can produce visible improvements in environmental protection and changes in company attitudes toward compliance.

Both the Sunnyside and Trail Mountain mines have a history of repeatedly violating numerous provisions of the law. In 1977 and 1981, one of the authors visited both mines and found them to be disaster areas. Trail Mountain had no effective water controls; coal fines and trash were washing directly into Cottonwood Creek; and erosion was so extreme that the mine facilities area was visibly disappearing. A sediment pond and berm system had been poorly constructed and maintained, and thus they did not function. At Sunnyside, the situation was similar: trash and old machinery filled drainageways where they existed; coal waste was dumped wherever it was convenient; and polluted water was being discharged directly into a stream channel.

In 1982, each company received five NOVs and two COs. Additional enforcement actions were taken in 1983.* In the fall of 1983 when the authors visited the mines, there had been a number of significant changes. Both had cleaned up the previous problems, built functioning water management systems, and, most important, were tackling the underlying causes of the problems instead of applying band-aid solutions. Trail Mountain had not only corrected the immediate problems on the mine site but was also repairing damage to Cottonwood Creek several miles downstream from the mine. When asked why his company had made the changes, the representative for one of the operators stated:

> For several years the mine resisted making any changes. When a NOV was issued, we counted on beating down the fine or getting it vacated. But the inspectors kept coming and issuing. Finally I guess there was a decision to switch rather than fight. Maybe we'd get shut down. We had to change. . . . Hell, this place was a mess. I still don't think a lot of the regulations make sense, but we'll do what we have to do and work with the Division. We'll probably still fight some too.

While a number of problems still remain at the mines and the lands will always bear the scars from years of irresponsible mining, the improvements are real. They show what the Act and state law can accomplish when inspectors are diligent, even when burdened by administrative interference. They also



Photograph showing part of the new water management system installed by Kaiser Steel at the Sunnyside mine. According to Utah Inspector Barton Kale (center), this settling pond will help prevent the water pollution, sedimentation, and erosion that once occurred regularly.

demonstrate that recalcitrant operators can change and mine in a more responsible manner.

Response to Ten-day Notices from OSM

OSM issued three Ten-day Notices to the Division in 1982 regarding potential violations at the mines in the sample. The Division responded promptly and properly by issuing two NOVs at the Sunnyside mine. At the Geneva mine, the Utah inspector took photographs showing that the situation was not a violation.

PENALTIES

In 1982, the average penalty proposed by inspectors for the NOVs issued at the sample mines was $941. The average final fine -- after the assessment conference -- was $544. This average includes six notices that were vacated by the assessment conference officer. In contrast, the average fine levied for 50 NOVs issued by OSM in the western states between 1979 and 1981 was $1,691 -- more than three times the average levied by Utah.

Utah uses a penalty system virtually identical to OSM's. After a citation is issued, the inspector prepares the proposed assessment using a worksheet. Ron Daniels, the Deputy Director of the Division who acts as the assessment officer, sends the proposal to the operator. Upon paying the proposed penalty, the operator may request an informal assessment conference to contest either the existence of the violation or the amount of the penalty. If the operator is not satisfied with the outcome of the assessment conference, the Oil, Gas and Mining Board holds a formal adjudicatory hearing. The Board decision may be appealed to the State court system.

Review of the records and interviews indicated that a number of improper and questionable actions regarding the assessment procedures and vacation of the violations occurred.

Assessment conferences were held at the request of the operators on 37 or 86 percent of the violations cited at the sample mines. No records could be located on four, and six violation were vacated by the assessment officer. Thus, an operator who requests an assessment conference has every likelihood that the fine will be reduced 40 percent and a one in six chance that the notice will be vacated. Given the very high proportion of conference requests, it seems clear that Utah operators were well aware of these odds.

Review of the records reveals that the assessment officer made a number of erroneous and questionable decisions to reduce penalties and to vacate violations. For example, Kaiser Steel was issued an NOV on March 2, 1982 for causing excessive erosion and failing to have any sediment control on part of the Sunnyside mine area. The abatement measures specified in the NOV required the operator to build a berm, install a water bar across a road, backfill and revegetate the eroded area, and submit plans to the Division detailing how sedimentation would be controlled in the future. All these actions were to be completed by April 15 (NOV 82-4-3-3).

When the inspector returned on April 21, he found that the operator had made no attempt to comply with the abatement measures. At that time, the inspector issued CO 82-4-4-1 for failure to comply with the NOV. The operator requested an assessment conference on the NOV, and after the conference, Mr. Daniels vacated the CO. His reason for doing so was that the operator had shown "good cause" because:

> Mr. Huefner indicated that his failure to abate was caused by his waiting for the Division to hold an assessment

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*The authors were unable to compile an in-depth case study of the compliance history of these mines because a number of records were incomplete or missing.

> conference on N82-4-3-3. The assessment conference was held on May 6, 1982 and the area was visited in the field. At the time of the assessment conference, the violation had been abated in full (Assessment Explanation, p. 1).

The inspector's account contradicts that of Mr. Daniels and provides additional information about the assessment conference:

> John Huefner did not indicate that his failure to abate was caused by his waiting for the Division to hold an Assessment Conference. The Assessment Officer indicated that that was the reason. Bret Harvey indicated that the work hadn't been done because John had failed to mention it to the surface crew . . . . If the operator had wanted to wait until after the Assessment Conference to address the violation he should have . . . requested a formal review of the Notice before the Board . . . for temporary relief . . . the delay [in holding the assessment conference] was in part due to the operators own inability to concur on a hearing date. (Undated memo to the file, "CO No. C82-4-2-1, 2 pages; emphasis in original.)

Despite the lack of rationale, Mr. Daniels' written statement indicates that the violation had not been abated when the CO was issued and that the operator did not contest the existence of the violation when the conference was held. Indeed, the operator had abated the violation before the conference.

Other citations were vacated or the proposed penalties were reduced for equally unsupportable reasons, and, in some cases, no explanation was given. For example, the Price River operator was cited for throwing trash and non-coal waste in the water diversion ditches. Mr. Daniels vacated the NOV because:

> [T]he item [a cable spool] of 'non-coal waste' . . . was not waste but was a returnable item used by a contractor. (NOV 82-4-9-1, Assessment Conference Report, Nov. 16, 1982.)

Apparently, Mr. Daniels believed the ditch could serve two functions: both to manage water and as well as a recycling collection center.

In another case, CO 82-1-3-1 was issued because an inspector found that the Coop operator had failed to properly store equipment and remove junk from the mine site within the deadline required by NOV 82-1-10-1. The Board of Oil, Gas and Mining vacated the CO even though it found that the operator had not met the deadline. It stated:

> [T]he Applicant had made and was making further efforts to control the storage of the non-coal waste which was the subject of violation N82-1-10-1. (Order of June 23, 1983, p. 2)

An additional problem was the long delay between issuance of the proposed assessment and the final assessment. Six penalties were not assessed for periods ranging from three to eight months. Records could not be found to confirm that many of the penalties were paid although the authors were assured that payment had been received.

The effect of this capricious system of penalties and vacated citations was to erode the authority and effectiveness of the Utah inspectors and violations were allowed to persist and increase. One inspector described this best:

> The operators lose respect for you when this happens, so I find myself playing assessment officer and not issuing NOVs that I know would be vacated, even though the situations are clear violations and may cause or are causing some environmental damage.

Unfortunately, the situation did not change greatly in 1983. For example, Mr. Daniels reduced the fine for Utah Power & Light's Wilberg mine for its "good faith" in achieving "Normal compliance in a difficult abatement situation. . . ." Yet the law reserves reductions for good faith for when the operator makes extraordinary efforts at compliance.

SUMMARY

Review of the records indicates that many parts of the Utah enforcement system are not functioning. Enforcement action was taken on only 34 percent of the violations observed by the Division's inspectors. In those situations when enforcement action was taken, many of the violations were vacated or the fines lowered, and the average fine levied at the 10 sample mines was an absurdly low $544.

The record contains many instances of gross administrative interference that was designed to ensure that the system did not function properly and fairly. Administrators ordered inspectors not to conduct inspections and not to issue violations at certain mines, the penalty system was manipulated to give violators repeated breaks, and the record keeping system was a shambles. Despite these barriers, the inspection staff continued to take some enforcement actions and was able to accomplish visible, on-the-ground improvements in environmental protection and prevention of damage. Due to the efforts of the inspectors, some chronic violators are changing their practices and correcting long-standing abuses. Indeed, the performance of the Utah inspectors in the face of overwhelming political pressure shows what dedicated individuals can accomplish.

Much needs to be done. Many operators have not complied with the law and adopted methods to prevent environmental degradation and achieve successful reclamation. Prevention of water pollution, erosion, and sedimentation is critical and must take place before incidents occur -- not after. However, these goals will not be accomplished and Utah's program cannot function properly without fundamental changes in staffing and political support. The leadership for reversing the present course and making these changes must come from the Governor, the legislature, the Oil, Gas and Mining Board, and the Office of Surface Mining.

WYOMING

BACKGROUND

By the mid 1970's, Wyoming was experiencing explosive growth in coal leasing and mine development. Some of the world's largest strip mines began operations on the northern plains and plans for many additional mines and coal-fired generating plants were announced almost monthly. Like Montana during the same period, Wyoming faced enormous pressures for rapid change and met this challenge by determining to guide and control this explosion of development in a way that protected its local economies and natural resources. Thus, the Wyoming legislature enacted facility siting, severance tax, coal mine permitting and reclamation, and several other laws controlling energy development.

After the passage of the federal Act in 1977, the state revised portions of its major environmental statute -- the Wyoming Environmental Quality Act -- and related regulations to encompass the requirements of the federal law. This revised regulatory program was approved by OSM in November 1980, making Wyoming one of the first states to receive approval. The Land Quality Division (LQD) of the Department of Environmental Quality (DEQ) administers the program, which had a total cost of about $1,827,000 in 1982. OSM paid 97 percent of this cost through grants to the state.

Coal mining is concentrated in three areas of the state: the Powder River Basin in the northeast, the Green River basin in the southwest, and the Hanna area in the south central. In 1982, 34 mining operations produced over 106 million tons of coal, most of which was produced by strip mining methods to be burned in power plants. Of the 34 operations, nine strip and one underground were selected as sample mines for this study; they include the Belle Ayr, Big Horn, Bridger, Kemmerer, PSO No. 1, Rawhide, Rosebud (Hanna), Seminole No. 2, Stansbury, and Wyodak mines.

INSPECTIONS

Frequency

Overall, the number of inspections conducted by the Division for the ten sample mines generally met or slightly exceeded the minimum requirements of the approved state program. It made 42 complete and 83 partial inspections, as compared to the 40 complete and 80 partial inspections required. LQD inspected seven of the ten mines the required number of times for both types of inspections, but the Belle Ayr and Kemmerer mines received less than four complete inspections and the Stansbury mine received only six partial inspections.

Some additional partial inspections were conducted by Wyoming's Divisions of Air Quality, Water Quality, Solid Waste and Game and Fish. When Wyoming's regulatory program was first established, inspections by these agencies were intended to be conducted in addition to monthly inspections by the LQD. According to LQD staff, however, numerous inspections by these agencies were substituted for LQD partial inspections in the first half of 1982 because of scheduling problems. This practice was stopped at the request of OSM, and, although partial inspections by other agencies concerned with environmental affairs are still conducted periodically, LQD now conducts all the inspections counted towards fulfilling the legally required number.

Completeness

The lengthy, detailed descriptions contained in LQD inspection reports and the information obtained from interviews with inspectors indicate that LQD inspections were generally thorough regarding visual observations. In most respects, inspectors were observant of on-the-ground conditions and knowledgeable about mining regulations. The inspection reports contain a narrative description of mine activities and conditions arranged into categories such as "Records, Hydrology, Topsoil Handling, Revegetation, Production, Signs, Problem Areas, and Summary." In addition, the inspectors file a number of photographs with explanatory captions as part of their reports. These are particularly useful for the public and others in the agency who review reports and need to understand what the precise conditions were during the inspection.

All but one of the reports for the complete inspections of the sample mines indicated that all mine areas and activities were visually reviewed by the inspectors -- a commendable record. However, the reports contained no indication that the inspectors consistently checked compliance with several types of regulations and permit conditions that cannot be confirmed visually or without special equipment. These checks include: taking water samples to see if effluent standards are being met, taking soil and overburden samples for analysis to determine whether they are suitable for use in reclamation; measuring regraded slopes to determine if approximate original contour and permit conditions are being achieved; and measuring topsoil to determine if the proper amount is being removed and replaced.

ENFORCEMENT

Violations

The inspection reports for the ten mines in the sample indicate that inspectors did not take enforcement action on most violations as the Wyoming Environmental Quality Act requires (35-11-437.(a)(b)). Of the 33 violations described at the ten sample mines during 1982, only three NOVs were issued. No cessation orders were issued nor proceedings on patterns of violation brought. (See Table 1.)

All three NOVs issued at the sample mines involved incomplete or inadequate blasting records. One of the NOVs (100012) issued to the Big Horn mine was eventually vacated by Robert Sundin, Director of the Wyoming Department of Environmental Quality, on October 10, 1982 because, although the blasting information "was not in the correct form," it "was substantially available," for review by the inspector.

LQD appears to have responded to formal and informal complaints regarding blasting at the Big Horn mine in an adequate manner. According to several residents living near the Big Horn mine, blasting since 1977 may be causing damage to property off the permit area. One LQD inspector explained that

TABLE 1. Violations Observed and Enforcement Actions Taken at the Wyoming Sample Mines in 1982.

MINE NAME	VIOLATIONS OBSERVED	NOVs ISSUED	COs ISSUED	ISSUED ON-SITE	PROCEEDINGS ON PATTERNS OF VIOLATIONS
Belle Ayr	1	0	0	0	0
Big Horn	9	2	0	2	0
Bridger	2	0	0	0	0
Kemmerer	3	0	0	0	0
PSO No. 1	4	0	0	0	0
Rawhide	1	0	0	0	0
Rosebud (Hanna)	6	0	0	0	0
Seminole No. 2	2	0	0	0	0
Stansbury	0	0	0	0	0
Wyodak	5	1	0	0	0
TOTAL	33	3	0	3	0

consequently inspectors "keep a close eye on blasting at the mine," and conduct additional inspections when requested by citizens. LQD has closely monitored blasting and seismographic data at the mine -- which indicates blasting is within the allowable limits -- and two NOVs were issued during 1982 when the operator failed to update blasting logs as often as required.

The three NOVs given to the sample mines in 1982 were issued at the mine site. According to LQD administrators and inspectors, the agency maintains a clear policy of issuing NOVs in the field, unless it is necessary for an inspector to review other technical documents or consult with other members of the agency who have a particular technical expertise. Wyoming maintains field offices in each of four districts around the state, and these districts are not required to consult Division officials in Cheyenne before citing violations.

Uncited Violations

The types of observed violations at the sample mines for which DEQ took no enforcement action included: 11 failures to construct or maintain diversion ditches, culverts, and other sediment control structures; 2 violations of effluent limits for sediment; 6 failures to remove or protect topsoil; 6 violations related to erosion control; and 1 violation involving storage of toxic overburden in an overburden stockpile contrary to the mine plan. Four of the 30 uncited violations involved requirements which are necessary primarily for the agency to enforce various regulations and safeguards. These included failure to keep adequate blasting records, neglecting to submit a subsidence survey to LQD, construction without prior LQD approval, and failing to obtain certified engineering reports for construction and maintenance of sediment pond dams.

Inspectors offered two reasons for not taking enforcement action on all observed violations: the lack of environmental harm and the stringency of some regulations. Although several inspectors interviewed acknowledged that environmental harm need not occur for a violation to exist, they indicated that the "likelihood" or "severity" of environmental damage or the existence of a safety hazard was considered in deciding whether or not to take enforcement action. According to one inspector:

> There's always an evaluation made in the inspector's mind about whether the situation warrants an NOV, a CO, or just a mention in the report. The regulations say you must have sediment control, for instance, but you have to evaluate the severity, in terms of environmental degradation, before deciding to issue a violation.

Several LQD staff members indicated they consider some requirements of Wyoming's approved program to be minor or excessively stringent, and therefore, they do not vigorously enforce these requirements. One inspector described several types of violations, including small areas without sediment control or topsoil stockpiles without signs, as "housekeeping problems," which do not deserve NOVs. Another inspector stated that:

> Some regulations on sediment control are excessively stringent for arid western conditions. If an inspector doesn't feel comfortable with the regulations or doesn't know why they are necessary, then he won't issue an NOV."

Although several LQD officials stated that topsoil and sediment control were the two "most important" areas in which LQD did rigorously enforce the regulations, 19 of the 33 uncited violations at the mines in the sample involved topsoil and sediment control measures requirements. Inspection reports indicate that formal enforcement action was not taken for such violations in several cases apparently because the inspector saw no evidence that environmental degradation had occurred yet. For example, one inspection report explained that:

> A berm must be installed along the riverbank to avoid possible water runoff from the parking area and storage area from entering river. No evidence of any runoff was noted during this inspection. (Big Horn mine, Mar. 25, 1982, inspection, Photo. No. 17 caption.)

In numerous other cases, violations were not cited because inspectors apparently felt that although erosion (Wyodak, 7/7/82) and loss of topsoil (Wyodak, 3/12/82; Belle Ayr, 6/3/82, caption to photos 10 and 11) had already occurred, the extent of environmental damage was minimal. (See also the "Abatement" section.)

As noted in the "Surface Mining Control and Reclamation Act" chapter, however, many violations such as failure to protect topsoil or minimize erosion may appear to have minimal environmental impacts but can have much more serious long-term cumulative impacts when combined with other seemingly "insignificant" violations over the life of a mine. The Congress and federal rule-makers recognized this fact by designing an enforcement system which does not require, or allow, inspectors to assess environmental harm in deciding whether or not to issue citations. However, the procedure for assessing fines does take into account the degree of damage caused by the violation, and lower fines are levied for lack of environmental impacts. This procedure provides an incentive to operators to correct problems when they first appear and to prevent them.

Warnings

In place of the law's mandatory enforcement requirements, Wyoming has largely substituted an informal system of warnings and requests for abatement that the inspector discusses with the operator at the mine site, mentions in inspection reports, or notes in separate letters accompanying copies of inspection reports sent to operators. At the Wyodak Mine, for example, the February 23, 1982 inspection report indicated that the operator had not salvaged topsoil up to the edge of the highwall along two sides of the pit. The same report noted that at one corner of the pit "some topsoil appears to have been involved in a slump" in the highwall. The next inspection report for March 12, stated that "there is a potential for environmental damage such as loss of topsoil at the crest of the highwall," but still no enforcement action was taken. Instead, the Division sent a letter to the operator on March 24, 1982 warning that:

> [S]everal problems were observed. The first is the presence of topsoil to the very edge of certain highwalls on the western side of the pit. This practice is strongly discouraged as it very often leads to loss of topsoil. Your people have promised to recover that topsoil noted in that position during this inspection.

In another situation at the Wyodak mine, a July inspection report noted that riprap had not been placed on a stream diversion as required by the approved mine plan and LQD regulations. Again, the violation was not cited and an informal warning was included in the inspection report. It stated:

> The newly constructed Donkey Creek Diversion lacks the riprap protection required by the approved plan . . . . This deficiency has already resulted in some erosion. Wyodak personnel should be aware that they may have similar problems as occurred on the previous section which required substantial remedial action . . . . It is imperative that Wyodak show good faith effort to comply with approved designs or to provide adequate alternatives and request the implementation of them. (Wyodak, 7/13/82; emphasis in original.)

Informal enforcement measures were used at the mines in the sample even when environmental damage had occurred and would continue to occur until the violation was completely abated. The caption for a photograph (shown below) taken at the Belle Ayr mine stated:

> Treatment of this exposed cut was discussed at length with the mine staff. Obviously, soil loss is occurring and the loss will be proportional to the length of time the bank is exposed to runoff. With steep slope and no vegetation this slope can be expected to continue eroding. Since the road is planned as a permanent road, it is suggested that the

Photograph showing eroded bank between revegetated area at top and road at bottom at the Belle Ayr mine. No enforcement action was taken on this violation. (Photo courtesy of Wyoming Land Quality Division.)

> cuts be stabilized by grading or terracing and that a sincere effort be made to establish vegetation. (Belle Ayr, 6/3/82, captions to Photos Nos. 10 and 11.)

This inspection report went on to require that erosion occurring on steep road cuts at the mine "should be stabilized according to Land Quality Rules and Regulations Chapter IV, Sec. 3 j(2)(a)(iv)." (It should be noted that when informal warnings are substituted for formal enforcement actions, the operator is not obligated to abate the violation within 90 days or a shorter period of time requested by the regulatory agency, as would be required if citations were issued.

Abatement

All NOVs issued at the sample mines concerned failures to keep complete blasting records, and abatement of these violations occurred promptly after LQD took enforcement action. In numerous cases, however, warnings or abatement requests made by LQD resulted in delayed or incomplete abatement of violations. For example, after inspectors noted that topsoil had not been stripped away from the highwall edges at the Wyodak mine on February 23, 1982, mine personnel promised to recover the topsoil in question. Although some loss of topsoil had already occurred and LQD had warned that additional loss of topsoil could result if a slump occurred in the highwall, the topsoil was not recovered through three subsequent partial inspections. In fact, the topsoil was not cleared away until the May 25 inspection -- over three months from the time abatement was first requested. (2/23/82, 3/12/82 and 3/25/82.)

In another situation at the Wyodak mine, chronic problems relating to the construction of a stream diversion were noted in numerous inspection reports during 1982, but no enforcement action was taken to assure prompt and complete abatement. As a result, severe erosion problems with the diversion continued into 1983, as described in the following inspection report:

> An area where erosion of the diversion bank is still severe is just downslope from Settling Pond No. 1. This area has been repaired numerous times in the past but after each repair, further damage occurs during major precipitation events. It is apparent just filling in the rills with overburden and scoria does not stop the erosion. Some kind of drop structure and collecting berm are needed here, similar to those installed further up the channel. (1/20/83.)

At two mines, erosion continued to occur for several months while plans to stabilize the erosion were submitted to LQD for approval. For example, inspectors reported that "rill and gully erosion is evident along the entire length" of one side of a topsoil stockpile at the PSO No. 1 mine during the February 17, 1982 inspection. Inspection reports indicated that a plan to stabilize the stockpile was submitted to LQD by the May 5th inspection, but repair of the stockpile had not begun until the June 29th inspection -- well over four months after the problem was first noted. (PSO No. 1, 5/5 and 6/29/82.) In a similar situation at the Rosebud mine, a rain storm had washed out a drainage channel one week before the August 12, 1982 inspection. By the following month's inspection, "riprap (was) being discussed as a solution to the washed out drainage channel" (Rosebud, 9/15/82). On October 27 -- over 10 weeks after the channel was washed out -- LQD had approved the use of riprap but was awaiting submittal of design criteria; the violation remained unabated. Because of winter weather conditions which existed by October, the channel was not fixed until mid-1983, according to an inspector interviewed.

In an interview, one inspector explained that the erosion at the Rosebud mine described above could have been abated in September, one month after it was first noted, but neither the operator or LQD knew what type of stabilization to use. "There's been a lot of discussion with the operator and within the Division on how to stabilize diagonal ditches on steep areas," explained the inspector, but a decision on the method to be used was not made until the winter. According to the inspector, the permanent program permit for the Rosebud mine, which should have contained a plan for stabilizing erosion, was not approved by the time this erosion was occurring.

An LQD administrator stated that, "Anytime an inspector sees a problem, every attempt is made to correct this at the mine site." However, an OSM inspector observed that LQD staff sometimes tended to "discuss things to death." Indeed, as the preceding samples illustrate, LQD appears to delay abatement of violations, although the extent or probability of environmental damage typically increases as long as violations such as those described above remain unabated.

Response to Ten-Day Notices from OSM

OSM issued three Ten-day Notices for mines in Wyoming between October 1982 and June 9, 1983. LQD responded promptly and appropriately to the first two Ten-day Notices. The first notice (No. 82-1-1-1) was issued as a result of a citizen's complaint sent to OSM, and LQD conducted an inspection and found that no violation existed. Osm issued the second notice (No. 82-1-2-2) on the basis of a violation described in an LQD inspection report, and the LQD responded by issuing an NOV.

The third notice was issued as a result of a joint inspection by OSM and LQD, during which the state inspector refused to issue an NOV for blasting flyrock on a a reclaimed area. The state did not contest the fact that this violation had occurred, but Nancy Freudenthal, Acting Director of LQD, "appealed to us that we had made a bad decision," according to an administrator in the OSM Casper Field Office. Ms. Freudenthal "didn't consider it a significant violation." However, OSM could not issue an NOV at this point because the OSM inspector had neglected to take pictures to use as evidence. Therefore, OSM agreed to reinspect the mine with an LQD inspector. They found that the operator had cleaned up the flyrock and, thus, no enforcement action was taken.

PENALTIES

Assessment Procedure

The process for levying penalties in Wyoming differs slightly from that in other states. Fines are initially proposed by the District offices of LQD which issue the NOVs. Often, the District offices recommend that no fine be levied. Proposed penalties are then sent to the Director of the Department of Environmental Quality, who then conducts the assessment conference, if one is requested by the operator, and levies the final fine.

In contrast to most of the other western states, the Wyoming inspector who issues the violation is not involved in the assessment process through the final assessment conference. Under Wyoming's process, "there's a lot of negotiation that goes on over the head of the inspector," according to one inspector. District offices are usually "pretty much in the dark" about final fines levied by the DEQ Director, and fines proposed by District offices are frequently reduced by the DEQ Director before the proposed penalties are sent to the operators. Then "companies can usually chew them down a little more or get it thrown out altogether" during the assessment conference.

Fines Levied

No penalties were levied for the three NOVs issued at the sample mines in 1982. One of the NOVs (100012) was vacated by DEQ Director Robert Sundin because, although blasting records were not kept in the correct form, the information "was substantially available," and because the records were supplied in a matter of hours after being requested. (Record of NOV 100012.)

In order to obtain a broader sample of penalties levied by LQD, information was collected on all the NOVs issued from June 1981 to June 1983. Of the 46 NOVs assessed during this period, no fines were proposed for 25, or

55 percent, of the NOVs. One LQD official explained that penalties are not usually proposed for the first NOV issued to an operator if the violation is considered minor. Fines were levied for only 45 percent, or 21 of the 46 NOVs issued by LQD from June 1981 to June 1983. The average of these 21 fines was $1,547. Including the 25 NOVs for which no fine was assessed, however, the average penalty assessed by LQD dropped to only $707.

For comparison, the average fine assessed by OSM from 1979 to 1981 for a sample of 50 NOVs issued in the western coal-producing states was $1,691 (which includes five NOVs for which no fine was assessed), or almost two and one-half times greater than the average penalty levied by LQD per violation. In addition, OSM chose to levy fines for NOV's over twice as frequently as Wyoming. (See Table 2.)

Fines levied "must be large enough to get the operator's attention," according to an LQD administrator, who explained that fines should be set so "it isn't cheaper to commit violations." One inspector, however, stated the range of fines currently levied by LQD are token amounts. He stated:

> They don't mean anything to a multimillion dollar corporation. The violation is what means something. They don't want a violation on their record.

This inspector went on to state that LQD has started keeping better track of fines and that larger fines are being levied by LQD. "Once you establish some precedent, you can work up to higher penalties," he explained. Although statistics on very recent fines issued by LQD were not available for this study, Wyoming would have to cite all observed violations, significantly increase fines, and change its policy of not assessing fines for the first NOV each operator receives in order to begin to use the penalty system as an effective enforcement tool.

TABLE 2. A Comparison of Penalties Assessed by the State of Wyoming and the Office of Surface Mining.

	Total Number of NOVs Issued	Average Penalty	Number of NOVs Assessed a Penalty	Percentage of NOVs Assessed a Penalty
WYOMING	46*	$ 707	21	45%
OFFICE OF SURFACE MINING	50**	1,691	45	90%

*Issued between June 1981 and June 1983.
**Issued in four western states between 1979 and 1981.

SUMMARY

Although the frequency of inspections generally met or exceeded the requirements of the state's approved program, the record shows that DEQ failed to carry out a large part of its enforcement responsibilities. The Department appears to have a highly competent interdisciplinary staff that is familiar with the mining operations. However, interviews and inspection reports indicate that inspectors are aware of many violations but ignore the requirement to take enforcement action on all violations. Enforcement actions were taken for only three of the 33 violations observed by inspectors at the sample mines during 1982. As a result abatement was delayed and environmental damage occurred. When enforcement action was taken, fines were low or not assessed. For 46 Notices of Violation issued between June 1981 and June 1983, the average fine was $707; 25 received no fine.

In place of the mandatory enforcement system, DEQ has substituted an informal system of warning violators about correcting violations. In most cases, rather than issue an NOV or CO for an observed violation, the inspector makes an informal abatement request at the mine site, in the inspection report, or in a separate letter sent to the operator. As a result, abatement times exceeded 90 days when informal enforcement procedures were used in several cases at the sample mines.

Two changes must be made to correct the problems in DEQ's performance: stop substituting warnings for taking enforcement action on all violations and overhaul the penalty process. The first could probably be accomplished with some additional training for the inspectors and administrators. The second requires more intensive training and preparation and for that reason OSM should take over that part of Wyoming's program until the state is capable of carrying out effective penalty procedures. Unlike inspectors in most of the other western states, the Wyoming inspectors believe they are insulated somewhat from industry pressure by strong support from the Governor. With his continued support and assistance from the legislature, the public, and OSM, the Department of Environmental Quality can make the required changes and run a very effective program.

THE OFFICE OF SURFACE MINING

BACKGROUND

The Office of Surface Mining (OSM) was heavily reorganized in 1981 after James Watt became Secretary of the Department of the Interior. The former Region V headquarters, serving all the western states from Denver, was split into three offices -- in Casper, Wyoming; Albuquerque, New Mexico; and Denver, Colorado -- each with different responsibilities. The Casper Field Office administers the oversight, state grants, and inspection and enforcement programs for Montana, North Dakota and Wyoming, as well as Alaska and the state of Washington. The Albuquerque Field Office has similar responsibilities for Colorado, New Mexico and Utah. In Denver, the Western Technical Center reviews permit applications, oversees projects to reclaim abandoned mined land, and provides technical support for the state programs.

This chapter describes the performance of the Casper and Albuquerque Field Offices regarding inspection and enforcement in the six states. Because the two field offices function separately and their performances differ, they are analyzed in separate sections. The analysis is based primarily on the records for the sample mines identified in the six state chapters.

As was explained in the chapter on SMCRA, the two field offices have a number of responsibilities concerning inspection and enforcement under the oversight program. Among other duties, agency employees must:

1. Conduct one complete inspection of each western mine every year under the OSM oversight program in order to review each mine's compliance with the state regulatory program;

2. Immediately conduct an inspection if there is reason to believe that a violation exists at a mine, such as information from a citizens complaint or a state inspection report;

3. Issue a Ten-day Notice to the state regulatory authority when a violation is observed that does not present imminent danger or harm; a Ten-day Notice would not be issued if a state inspector had already taken enforcement action;

4. Issue a Notice of Violation (NOV) to the operator if the state does not respond properly to the Ten-day Notice;

5. Issue a Cessation Order (CO) immediately upon observing a situation that presents imminent danger to public health and safety or imminent environmental harm; and

6. Evaluate each state's inspection and enforcement performance annually and require changes if performance does not comply with the requirements of the state's regulatory program.

POLICIES AND PROCEDURES

In addition to the responsibilities described in the Surface Mining Control and Reclamation Act (SMCRA) and the OSM regulations, OSM has issued several relevant policy directives and established certain procedures for the field offices concerning inspection and enforcement. This section describes several of the most important ones and summarizes their effects on OSM activities in the western states.

Prompt Enforcement by States

In a memorandum clarifying OSM's interpretation of "prompt enforcement" by state inspectors when violations are observed, the Assistant Director of OSM stated that:

> OSM will continue to require that State inspectors issue and serve enforcement actions when observed and before leaving the sites. The few exceptions to this are when sample analyses or technical assistance are needed by the inspector to ascertain the validity of the violation. (William Schmidt to Field Office Directors, April 8, 1983.)

Thus, formal OSM policy requires the state inspectors to issue citations for all observed violations before leaving the mine site, except under the limited circumstances described above. This memorandum did not specify what action the field offices were to take if a state did not take prompt enforcement action for observed violations, although SMCRA requires issuance of a Ten-day Notice by OSM, as described above.

ENFORCEMENT

Ten-day Notices

Ten-day Notices are issued immediately by OSM to the State regulatory agency when a potential violation is brought to OSM's attention by an OSM inspector's observations at the mine site, through a citizen's complaint, or upon reading a state inspection report. The Notice is mailed to the state agency and it has ten days after receipt in which to either take enforcement action or explain why enforcement action is not required. If the explanation is not satisfactory, then in most situations, OSM is required to inspect the site and issue an NOV if the violation still exists. Thus, while not technically an enforcement action, the Ten-day Notice is the first step in OSM's enforcement procedure for ordinary violations.*

OSM's procedures make one exception to the requirement for issuing a Ten-day Notice by mail and awaiting the state's response:

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*As was explained previously, OSM inspectors are required to issue COs immediately upon observation of the violation and do not first give notice to the state agency.

> [W]hen short term violations are noted, the State will be contacted immediately so that an enforcement action can be taken. ("Plans and Procedures for the Evaluation of the States' Permanent Programs," 1982, p. 11.)

In the same document, OSM describes "short term" violations to include such violations as "discharging 'black' water, blasting, etc," that can have major environmental effects in a short period of time, but which may not be visible by the time a state inspection can be conducted. (Id.)

As described in the sections below regarding the performances of the Albuquerque and Casper Field Offices, the requirement for state and OSM inspectors to take immediate enforcement actions in the field was not followed consistently. To some extent, this appears attributable to several informal and formal field office procedures that contradict the provisions of SMCRA, the OSM regulations and the policy memo quoted above requiring prompt enforcement by inspectors at the mine site.

For example, if a state inspector refuses to cite a violation during a joint inspection with OSM, OSM policy requires the federal inspector not to issue Ten-day Notices without consulting a supervisor. As the following excerpt indicates, this policy was established apparently to enable field office supervisors, rather than inspectors, to make the decision concerning whether or not to issue Ten-day Notices.

> In the case of a State/OSM disagreement (i.e., existence of a violation or remedial measures to be taken, etc.) during a joint inspection, the OSM inspector will consult with his or her supervisor prior to a decision by OSM on whether or not to issue the Ten-day Notice. This may also require the supervisor to contact the appropriate State official in order to resolve disagreements or prior to concluding the decision. ("Plans and Procedures for the Evaluation of the States' Permanent Programs," Mar. 5, 1982, p. 10.)

Another OSM policy requires the field offices to furnish evidence of violations upon the states' request so the state could issue an NOV even though a violation was no longer occurring at the time of the state inspection. This policy states that:

> Inspections conducted by OSM that reveal "short term violations (i.e. discharging "black" water, blasting, etc.) are noted as a particular enforcement problem during the permanent program . . . . [T]he operator will be advised of the violation [at the same time that] a Ten-day Notice will be given to the State. [Therefore], (e)vidence such as photographs and laboratory samples will be collected, and will be made available to the State upon request. (Ibid., p. 11.)

From the records available, the authors were unable to determine whether an attempts was made by any of the six states or OSM to take enforcment action for "short term" violations based on evidence collected during regular OSM oversight inspections.

Issuance of NOVs

Although regulations require OSM to issue an NOV if a state fails to respond appropriately to a Ten-day Notice (30 CFR 843.12(a)(2)), the field offices followed a policy of not issuing NOVs when states failed to respond appropriately to Ten-day Notices. Instead, decisions by OSM administrators were substituted for the on-site enforcement authority of inspectors because William Schmidt, the Assistant Director of OSM instructed all field office directors to first attempt to persuade the state agency to reconsider its decision not to take enforcement action. He told the directors:

> [S]hould you encounter such a situation, I would like you to immediately initiate discussions with the State Regulatory Authority (RA) to encourage the RA to take proper action. Normally, this should include a suggestion to the RA that a joint OSM/State inspection be conducted at the earliest opportunity. (William B. Schmidt, Memorandum to Field Office Directors, Sept. 29, 1982.)

If a second inspection by OSM indicated the violation still existed -- and the state agency still had not taken enforcement action -- the directors were instructed to obtain the approval of the Assistant Director in Washington, D.C. before issuing an NOV:

> As you know, our present regulations allow OSM to issue a notice of violation (NOV) to the operator after a ten-day notice. I am asking that my concurrence be obtained before such action is taken. Improper use of our NOV authority in this circumstance could result in judicial action which could compromise our enforcement activities. We would like to assure that these cases be selected with care since we will be taking an exception to State action. In two cases, to date, the State had taken the matter to State court or Federal court and could take no further action. OSM then issued NOV (sic) to the operators. In both cases the Solicitor's Office has disagreed with that action . . . again, my concurrence is required prior to the NOV issuance in the future. (Id.)

The OSM inspectors in both offices believed the agency's policy in 1982 was to avoid issuance of Ten-day Notices and NOVs. As one inspector told the authors:

> The states resented receiving the Ten-day Notices and have complained, so Washington did not want NOV's issued if the state did not issue an NOV in response to a Ten-day Notice because it would make the states look bad. [Issuance of] NOVs was a political decision to be made by Washington.

In summary, OSM policies treat the issuance of Ten-day Notices and NOVs as discretionary actions to be avoided if possible through negotiations between OSM supervisors and the administrators of the state agencies. In practice, these policies radically changed the authority of federal inspectors and prevented OSM from acting on many violations. The Congress mandated immediate issuance of Ten-day Notices and NOVs and impowered inspectors to make the decisions on enforcement actions because they had first-hand knowledge of mine site conditions. However, through policy, OSM seems to have disarmed the inspectors of much of their authority and reduced their role to a passive one of making observations, reports, and recommendations. Adherence to these policies delayed the abatement of some violations and resulted in no enforcement action taken on many. (See discussion below on Enforcement for both the Albuquerque and Casper offices.)

Inspection Report Forms

Throughout 1982 OSM inspectors used a report form containing check-off spaces for 16 performance standards. A numerical code was used to describe the compliance status of the mine for each standard according to five categories:

1. In compliance,
2. Not in compliance (State took action),
3. Not in compliance (State has not taken action)
4. Not in compliance (other),
5. Not applicable.

The 16 items on the list were generic categories identified by short phrases, such as "blasting procedures," "refuse impoundment," "disposal of excess spoil," and "timing of revegetation. Small blank spaces were provided for the inspector to describe: what actions were taken or should have been taken for the items not in compliance; if the permit was not in compliance with the approved program; if conditions existed that were not adequately addressed in the permit; and for other comments and recommendations.

The form lacked a check-off for many items required to be inspected such as protection of alluvial valley floors; ground-water handling; availability of permit records, engineering reports, and certifications; and the types of evidence collected and measurements made by the inspector, such as water samples, photographs, and slope measurements. Unless an inspector made a special effort, no information was given in the report on which areas of the operation were inspected as well as for the items not on the list. In interviews, OSM field staff stated that the forms were designed to enable inspection statistics to be compiled by computer and that inspectors were discouraged from writing any narratives because "they don't fit in the computer format." In sum, the form did not appear to provide the detailed information necessary to ensure that all aspects of the mine were observed nor that compliance with all pertinent standards was reviewed. In mid-1983, OSM revised its form; the new one includes design and certification requirements but still omits the other items.

THE ALBUQUERQUE FIELD OFFICE

All the Albuquerque inspection and enforcement staff in 1982 were experienced inspectors who were knowledgeable about western mining practices and conditions. Most came from the Region V staff in Denver where they worked on technical, enforcement and administrative matters. In addition, most had worked as inspectors for state regulatory agencies or as resource specialists for private companies or government agencies before joining OSM. Thus, the staff had the experience to carry out a sound inspection and oversight program.

Because Colorado, New Mexico and Utah each had an approved state program with slightly different regulations and practices, the Albuquerque office assigned one inspector to be primarily responsible for each state in 1982. This inspector was the most knowledgeable staff person about the state program and conducted most of the inspections in that state. Full-time inspectors were assigned to Utah and Colorado, which have the most mines, and a half-time inspector was assigned to New Mexico.

INSPECTIONS

Frequency

At the 33 sample mines in the three states, OSM Albuquerque conducted 20 complete inspections in 1982, 61 percent of the number required, and 11 partial inspections. (See Table 1.) In interviews, three reasons were offered for the shortfall in complete inspections: understaffing, the drop in morale after the reorganization of the agency, and an erroneous assumption that partial inspections fulfilled OSM's oversight requirement.

Staffing levels in Albuquerque appear to be based on average inspection times nationwide with insufficient allowance made for the long travel times and large areal extent of mines in the West. For example, in order to fly by commercial air service from New Mexico to Utah, one must go through Denver and change flights. For large or multi-operations in the West, an inspector often must spend one to two days reviewing the mining and reclamation plan before conducting the inspection and writing the inspection report.

The staff stated that morale was low due to the insensitive handling of the reorganization of the Region V office in Denver in 1981. Employees first learned of the reorganization from newspaper articles, instead of the usual agency channels. Reliable information could not be obtained about which employees would remain with the agency, when they would be relocated, and what job rights employees had. Most important, the reorganization was perceived by many employees as a political witch hunt by the Reagan administration to destroy environmental regulatory programs and get rid of the individual employees responsible for their implementation. Staff members told the authors that morale was slowly improving and they believed that more work was being accomplished in 1983 than in 1982.

As for the third reason, before August 1982, the Albuquerque office erroneously counted partial inspections as fulfilling its oversight inspection requirement. Thus, if a partial inspection was conducted at a mine, that mine did not also receive a complete inspection. This procedure was corrected in August 1982 and all subsequent oversight inspections were complete ones.

Report Completeness

The Albuquerque inspectors usually ignored the policy of confining inspection reports to the checklist so as not to confound the computer with narrative descriptions. Many reports contained commendable and informative additions such as the majority of reports prepared on inspections conducted at the Utah mines. For example, attached to one report on the Sunnyside mine was a four-page narrative that discussed the conditions found at the mine. It included important items not contained in the official report form such as the current bonding status, the records reviewed by the inspector at the mine site, and specific observations made at different areas of the mine site (OSM, 11/23-24/82). Another report, for the October 28, 1982 inspection of the Allen mine in Colorado, contained a detailed explanation of each item checked for non-compliance and a two-page attachment described the actions taken by the Colorado regulatory agency in response to two Ten-day Notices issued by OSM. These types of reports do give sufficient detail to overcome most of the inherent limitations of a reporting form set up for the convenience of a computer-based statistical system. They provide support for the inspector's actions, an account of what occurred, and an accurate record for citizen and supervisory review.

ENFORCEMENT

Violations

At the sample mines inspected by OSM Albuquerque, the inspection reports indicated that 47 violations were observed and enforcement actions were taken on 24 of them. Of the enforcement actions, in nine instances a state inspector accompanying the OSM inspector issued an NOV, and in seven instances OSM issued a Ten-day Notice to the state agency. No citizen complaints were received, and OSM issued no NOVs or COs at the sample mines in 1982. Thus, no enforcement action was taken on 23, or 49 percent, of the violations observed.

The violations observed but not cited include: lack of functioning water diversion and sediment controls (19); failure to properly grade, reclaim, extinguish fires, or comply with other miscellaneous requirements (8); lack of perimeter markers (5); and failure to properly salvage or store topsoil (1). Review of the records and interviews indicated that there were three reasons that OSM Albuquerque did not take enforcement actions on most observed violations. These are an erroneous assumption of what constitutes a violation, improper reliance on state warning and informal enforcement procedures, and, as discussed above, adherence to OSM policies that cancelled some of the enforcement mandates in SMCRA.

Although most Albuquerque inspectors acknowledged that the regulations do not require environmental harm to have occurred on or off the site, that an operator must be cited for a violation, and that the goal of SMCRA is to catch and abate violations as early as possible before damage could occur, the inspectors also indicated that many violations were not cited because significant environmental harm had not occurred. This apparent contradiction is illustrated by one inspector's statement that if harm had not occurred or was "insignificant," then it was "up to the inspector's judgment" whether to issue; the inspector added, "Of course, the regulations do not require environmental harm to happen."

TABLE 1. The Number of Inspections Conducted and Enforcement Actions Actions Taken at the Sample Mines by the OSM Albuquerque Field Office in 1982.

MINE NAME	INSPECTIONS		VIOLATIONS	ACTIONS TAKEN ON VIOLATIONS	
	COMPLETE	PARTIAL	OBSERVED BY OSM	NOV BY STATE	OSM TEN-DAY NOTICE
COLORADO					
Allen	1	1	7	2	4
Bear	0	1	0	0	0
Canadian	1	0	0	0	0
Colowyo	0	0	0	0	0
Eagle	0	1	2	1	2
Edna	0	0	0	0	0
GEC	0	1	0	0	0
Hawk's Nest	0	1	3	0	0
McClane Cn.	1	1	0	0	0
Maxwell	1	1	4	1	1
Newlin Crk.	1	0	1	0	1
Nucla	0	0	0	0	0
Seneca	0	1	2	0	0
Snowmass	0	1	1	0	0
Somerset	1	0	0	0	0
Tomahawk	0	0	0	0	0
Trapper	0	0	0	0	0
Twin Pines	1	0	1	1	0
Total	7	9	21	5	6
NEW MEXICO					
De-Na-Zin	0	0	0	0	0
McKinley So.	1*	0	0	0	0
San Juan	0	0	0	0	0
Tres Hermanos	0	0	0	0	0
York Canyon	1	0	5	2	0
Total	1	0	5	2	0
UTAH					
Coop	2	0	6	4	0
Deer Creek	1	0	1	0	0
Factory Butte	1	0	7	0	0
Geneva	1	0	1	0	1
Knight	1	0	0	0	0
Price River	0	0	0	0	0
Star Point	1	0	0	0	0
Sunnyside	1	0	3	2	2
Trail Mtn.	1	1	0	0	0
Wilberg	2	1	3	2	0
Total	11	2	21	8	3
GRAND TOTAL	20	11	47	15	9

In numerous other cases, inspection reports noted that violations had been observed and that Ten-day Notices were not issued because the state inspector had warned the operator to abate the violation. For example, an OSM inspector indicated that "Run-off control" was "Not in compliance" at the Sunnyside mine in Utah on a Nov. 23, 1982 inspection (Report, p. 2), but noted in the attached narrative that the state inspector had issued an informal warning to the operator for "inadequate sediment control" on "five small areas" (Ibid.,p. 10). In another situation, an OSM inspector observed erosion around a pond outlet at the Eagle mine in Colorado but noted in the report that the state inspector had instructed the operator to correct the situation (OSM and MLRD reports, 3/4/82). However, as noted in the state chapters, warnings are not enforceable and, by law, cannot be substituted for taking enforcement action.

On one occasion an OSM inspector observed probable violations but did not issue Ten-day Notices because additional information was required to verify the noncompliance. However, the records contain no indication that this review was made. For example, at the York mine complex in New Mexico, the OSM inspector described the drainage system as appearing to by-pass the sediment control system through "short circuiting" because of the construction method. The report noted that "additional review is necessary [to determine] compliance in regard to storm capacity and design." During the same inspection, the inspector also noted that:

> [T]he location of the (topsoil) pile is questionable because it is in the flood plain. The State has noted this in past inspection reports but to date, no enforcement procedures have been implemented. As an observer, I am unable to make a judgment as to the susceptibility of flooding in the area unless additional hydrological data is reviewed so the issue is unresolved at this time. (York complex, 5/4/82 at 3.)

Throughout the inspection, the inspector seemed to assume the role of observer instead of investigating conditions that could prove extremely damaging:

> I did not see diversions that would carry surface drainage away from the the embankment area or other embankment features because the time spent in that area was very brief.

Two alternatives were available to OSM: immediately conduct a follow-up inspection to verify the condition of the flood plain and drainage system, or issue a Ten-day Notice to the state agency, which would be required to issue an NOV or to explain why no violations had occurred. Instead, OSM took no action and made no investigation.

On a joint inspection of the Factory Butte mine in Utah, both the state and OSM inspectors noted a number of serious violations (OSM, 9/15/82). The operator had mined and abandoned the site and then declared bankruptcy in 1979. Although the appropriate action was a Cessation Order, none was issued.

Prompt Enforcement by States

All state laws, just as SMCRA does, require inspectors to cite violations "immediately" (SMCRA, Sec. 521). According to the OSM policy quoted previously, state inspectors must issue citations for all observed violations before leaving the mine site, except under two limited circumstances -- when sample analyses or technical assistance are required. In interviews, OSM officials stated that they believed this to be a critical requirement of the law that must be carried out.

As was described in previous chapters, Colorado and New Mexico inspectors seldom took enforcement action at the mine site, whereas the Utah inspectors did, and this practice resulted in considerable delays in issuing citations and obtaining abatement of many violations. The Colorado and New Mexico agencies issued three NOVs at the sample mines in 1982 as a result of joint OSM and state inspections, but none of these was issued on the mine site and issuance was delayed an average of 6.3 days after the inspection. (See NOVs 025 and 026 of New Mexico and 82-10 of Colorado.) Moreover, neither the state nor the OSM inspection reports indicated that sample analyses or technical assistance were required in order to determine the validity of any of the violations and to prescribe abatement actions. Despite official policy and statutory provisions making OSM responsible for requiring states to take immediate enforcement action for all violations, records indicate that OSM made no effort to require prompt issuance of NOVs in Colorado and New Mexico.

Issuance of Ten-day Notices

As noted previously, OSM requires inspectors to consult their supervisors before Ten-day Notices are issued, and when they observe "short term" violations, OSM inspectors are required to notify the state agency immediately so the state can issue enforcement actions and begin abatement. Most Ten-day Notices issued by the Albuquerque office appeared to be delayed for several days after the inspection. Six Ten-day Notices were written between two and nine days after the inspection, an average of 7.6 days after the violations were observed. Another was written 36 days after an inspection because OSM had to await the return of a water sample analysis (Sunnyside mine, issued on Dec. 29, 1982).

Federal Notices of Violation

During 1982 and into early 1983 the policy of OSM Albuquerque regarding its enforcement authority evolved significantly but slowly. During 1982, the Albuquerque field office reinspected the mines when states failed to respond appropriately to Ten-day Notices. However, after the 10-day response period had ended and violations were found to still be occurring during the second OSM inspection, the office repeatedly attempted to persuade the states to take enforcement actions. It was not until 1983 that the office began to issue NOVs if a state agency failed to take enforcement action.

In response to the first Ten-day Notice issued by the Albuquerque office (82-5-2-1, Apr. 23, 1982), Colorado gave five reasons for not issuing an NOV to the Newlin Creek mine, none of which was a legally valid reason for not taking the enforcement action required by the state's approved program:

> 1. The potential for environmental damage . . . is minimal or nonexistent at this time due to the dry conditions on site . . . .
>
> 2. This concern has not been previously noted in any State inspection reports. The Division feels that the operator is as concerned about maintaining an environmentally sound operation as the regulatory authority, and was unaware of the problem until pointed out by the inspectors.
>
> 3. The operator is in the process of moving the waste material to another location where it will be used to reclaim abandoned mined land.
>
> 4. In a telephone conversation with the operator this morning, [He] stated that the recommended abatement (rechanneling the diversion into the sediment pond) had been performed.
>
> 5. A Colorado state inspector will be on site May 3 or 4, 1982, in order to confirm that abatement activities have been performed. (Letter from David Shelton, MLRD, to Thomas Ehmett, OSM, Apr. 29, 1982.)

As the excerpt above indicates, no state inspection had been conducted and the MLRD Director did not deny that a violation had occurred. Instead, he believed an NOV was inappropriate because, among other reasons, the danger of environmental harm was minimal and the operator had alleged that the violation had been abated. Instead of taking enforcement action, OSM telephoned MLRD several days after receiving the state's response to verify that MLRD had inspected the mine to confirm that the violation had been abated. The state had conducted an inspection and found a diversion ditch had been reconstructed to divert all runoff into the sediment pond, abating the violation. OSM made no effort to correct the Colorado Director's misunderstanding of what constitutes a violation and merely noted for purposes of the annual oversight report, that the state's response was "inappropriate" (OSM, Report of Telephone Conversation, May 6, 1982).

A few months later, the Albuquerque office made a more positive but still insufficient response to a state's failure to take enforcement action on a violation cited in a Ten-day Notice. It sent a "letter of deficiency" to the operator regarding a violation, rather than issuing an NOV as required. OSM reinspected the mine site. It found that the violation no longer existed, and, therefore, did not issue an NOV. In addition to reinspecting the mine, OSM sent a letter to New Mexico warning that:

> Your letter of deficiency . . . to the operator appears to be a substitute for a Notice of Violation. This practice appears to be in conflict with your approved program. Warnings are only acceptable in situations where conditions have not reached the point of becoming violations. (Letter from Robert Hagen to Ed Kelley, Sept. 20, 1983.)

OSM's response was insufficient because it did not immediately conduct an inspection when the state failed to respond within 10 days.

In October 1982, the Albuquerque office also conducted several follow-up inspections in Colorado when the state did not take appropriate enforcement action in response to Ten-day Notices. Instead of issuing NOVs when the violations were observed for the second time, however, the Albuquerque office attempted to persuade the state to issue the citations. The consequences of this policy led to extremely long delays for taking action and obtaining abatement of some of the violations. For example, as a result of the September 2, 1982 inspection of the Allen mine, OSM issued a Ten-day Notice for four violations. In response, Colorado inspected the mine 15 days later, on September 17 and indicated that although two of the violations still existed, it would not take enforcement action. OSM conducted a second inspection on October 28 and found that one of the four violations still existed (failure to direct surface drainage water through a sedimentation pond) and the inspector took a water sample as evidence. Instead of issuing an NOV, OSM again tried to persuade Colorado to take action. The OSM inspection report described the following events:

> On 11/5/82 a telephone conference call was held that included William B. Schmidt, OSM, Thomas E. Ehmett, OSM and David Shelton, MLRD. During the conversation, Mr. Shelton decided to reinspect Violation No. 1 and to issue an NOV if Violation No. 1 still existed. MLRD reinspected on 11/16/82 and issued NOV #82-61.

Altogether, nearly two months passed between the time Colorado first refused to take enforcement action and when it finally issued an NOV to obtain abatement of the violation. (See also Ten-day Notice 82-2-1-2, Maxwell mine, Colorado.)

By 1983 the Albuquerque field office had begun following up states' responses to ten-day notices and using its own enforcement authority to issue NOVs. In a letter to the authors, OSM's Albuquerque office explained that:

> Procedures for handling ten-day notices were not well defined [in early 1982] . . . . It is the standard practice of this office now to evaluate each State response to a ten-day notice and to reply by letter to the State Regulatory Authority advising it whether the action taken was appropriate or inappropriate. A follow-up inspection is then made to verify abatement or to initiate Federal enforcement action, if necessary. (Letter from Robert Hagen, Albuquerque Field Ofc. Director, Sept. 16, 1983.)

The procedure described above is currently being carried out by OSM Albuquerque in cases where states refuse to take enforcement action in response to Ten-day Notices. In October 1982, OSM conducted a complete inspection of the Eckman Park Mine #1 operated by Colorado Yampa Coal Co. and two Ten-day Notices were issued for excessive rill and gully erosion. The Colorado Mined Land Reclamation Division responded that the erosion was not excessive and would stabilize upon controlling the drainage source. OSM decided the response was inappropriate because the erosion violated Colorado's regulations and conducted a second inspection, after the heavy snow cover was gone, in June 1983. Upon finding that the violations still existed, the OSM inspector issued an NOV on the site.

Review of State Inspection Reports

In 1982 the Albuquerque inspectors reviewed most state inspection reports but told the authors their review was hampered because the states failed to send copies in a timely manner. The delay was compounded by the fact that state inspectors often delayed writing their reports for up to several weeks after the inspections. Thus, the delays made it impossible to follow up many apparent violations described in the state reports in a timely manner.

The authors found that many reports were delayed but could find no record of how soon after receipt they were reviewed by the OSM inspectors. More troubling, apparently the office had no procedure to ensure that Ten-day Notices were issued on all apparent violations described in the state reports although some were issued. (See, for example, Ten-day Notice 82-2-2-3 on the Geneva mine, Utah, Sept. 9, 1982, issued on the basis of a state report.) In interviews, inspectors and supervisors stated that in 1983 the office was receiving state reports more quickly and was issuing more Ten-day Notices on the basis of those reports. Review of the records indicated this was indeed the case but that a procedure to confirm which problems are violations and which are not was still lacking.

SUMMARY

The Albuquerque office partially carried out its regulatory program in 1982. It conducted only 61 percent of the required inspections at the sample mines, and no enforcement actions were taken on 23 or 53 percent of the violations observed by its inspectors. Review of the 1983 records indicates that inspection frequency has improved greatly and the office is taking more enforcement actions to crack down on violators.

On the whole, the Albuquerque staff conducted high quality inspections and exhibited a great deal of analytical skill in analyzing the performance of the Colorado, New Mexico, and Utah state agencies and documenting many of their problems. However, the agency is responsible for more than making observations and analyses -- it must ensure that the state agencies enforce their programs and take over all or part of those programs if the states do not perform. OSM has not used the analyses and observations of its Albuquerque staff to carry out this responsibility. In the "Conclusions and Recommendations" chapter, the authors outline the steps OSM must take in order to fulfill its responsibilities.

THE CASPER FIELD OFFICE

INSPECTIONS

Frequency

In 1982 the Casper field office conducted 10 complete inspections at the 20 sample mines in Montana, North Dakota and Wyoming. The 10 complete inspections represent 50 percent of the required number. In addition, two partial inspections were conducted. (See Table 2.)

Inspection reports indicate that the Casper office was unable to conduct two complete inspections scheduled in North Dakota during 1982 because of poor weather conditions and substituted partial inspections. (OSM, Falkirk, 6/8/82 and Center 11/2/82.) However, if weather conditions had not prevented these two complete inspections from being conducted, only 12, or 63 percent, of the required number of complete inspections would have been conducted.

The small number of inspectors at the Casper field office may have contributed somewhat to the inadequate number of complete inspections conducted. In 1982, the Casper office had only three people qualified to conduct inspections, of whom two were full-time inspectors. In interviews, OSM administrators stated that they were attempting to add another full-time inspector to the Casper field office staff. The 1981 reorganization of OSM seems to have been a major cause of understaffing in the Casper office, as there was a lengthy delay between the time the office was opened and the time inspectors were hired. Inspections of the sample mines did not begin until late May of 1982.

Completeness

Interviews with state inspectors and review of the OSM inspection reports indicated that many inspections conducted by the Casper field office were not as thorough as required to fulfill OSM's responsibilities for complete inspections. The inspection reports rarely contained any description of site conditions and tests and measurements made by the inspector to check for non-visual violations.

One state inspector who had frequently accompanied OSM inspectors said the OSM inspectors were not "aggressive" and usually "did not get out of the car" during inspections. The inspector also stated that OSM inspectors do not seem familiar with the permits for the mines being inspected. The amount of time spent reviewing mine permits and conducting inspections also indicates that some "complete" inspections may not have been complete. One "complete" inspection, for example, was conducted in only two hours (OSM, Ash Creek, 8/11/82). Two "complete" inspections were also conducted in the same day by one inspector, who did not spend any time reviewing the mine permits before conducting either inspection. (OSM, Ash Creek and Big Horn, 8/11/82.) There was no record that the inspector had previously visited the two mines or reviewed the permits.

In addition, discrepencies between state and Casper OSM reports on joint inspections indicated that many of OSM's inspections were not conducted and documented as thoroughly as required. While state inspection reports often contained lengthy descriptions of conditions at the mine site, OSM reports usually contained no narrative information except a brief paragraph stating who was present and that no violations were observed. Of the 12 joint inspections conducted by OSM and state inspectors at the sample mines from 1982 through January 1983, OSM reports noted only seven violations, while state inspections described 18 violations. For example, the OSM inspection report for one joint inspection stated that:

> No violations were noted although a minor erosion problem was discussed on Area E. WECO [Western Energy, the operator] will repair when weather conditions permit. (OSM, Rosebud mine, Montana, 1/26/83.)

TABLE 2. The Number of Inspections Conducted and Enforcement Actions Taken at the Sample Mines by the OSM Casper Field Office in 1982.

MINE NAME	INSPECTIONS		VIOLATIONS OBSERVED BY OSM	ACTIONS TAKEN ON VIOLATIONS	
	COMPLETE	PARTIAL		NOV BY STATE	OSM TEN-DAY NOTICE
MONTANA					
Big Sky	1	0	0	0	0
Divide	0	0	0	0	0
P.M.	0	0	0	0	0
Rosebud	0	0	0	0	0
West Decker	1	0	0	0	0
Total	2	0	0	0	0
NORTH DAKOTA					
Center	0	1	0	0	0
Falkirk	0	1	0	0	0
Glenharold	1	0	2	0	0
Indianhead	0	0	0	0	0
South Beulah	1	0	1	0	0
Total	2	2	3	0	0
WYOMING					
Belle Ayr	0	0	0	0	0
Big Horn	1	0	2	1	0
Bridger	1	0	0	0	0
Kemmerer	0	0	0	0	0
PSO No. 1	1	0	0	0	0
Rawhide	1	0	0	0	0
Rosebud (Hanna	0	0	0	0	0
Seminole No. 2	1	0	0	0	0
Stansbury	0	0	0	0	0
Wyodak	1	0	0	0	0
Total	6	0	2	1	0
GRAND TOTAL	10	2	5	1	0

However, the Montana inspector's report for the same inspection, six violations were described, including stockpiling topsoil in an unapproved location; excessive erosion; blasting without adequate warnings or signals; and failure to post topsoil, perimeter and stream buffer zone markers. The "minor erosion problem" noted by the OSM inspector actually involved rills and gullies over nine inches deep on a topsoiled portion along a road, according to the state inspector's report (DSL, Rosebud, 1/26/83). Despite the fact that the state inspector did not issue any NOVs, the OSM inspector did not issue a Ten-day Notice.

ENFORCEMENT

Violations

During the 12 inspections conducted at the sample mines during 1982, the Casper field office inspectors noted five violations and enforcement action was taken on only one -- a state inspector issued an NOV. OSM issued no Ten-day Notices, NOVs, or COs at the sample mine; thus, no enforcement was taken on 4, or 80 percent of the violations observed. (See Table 2.)

The four violations noted by OSM inspectors for which no enforcement action was taken by the state or OSM included: failure to maintain drainage for a haulroad, resulting in the deposition of some silt on undisturbed ground near a topsoil stockpile (OSM and LQD, Big Horn, 8/4/82); failure to establish runoff control before removal of topsoil, (OSM and PSC, South Beulah, 11/3-5/82); sediment blocking a ditch and straw ditch, and erosion over nine inches deep on a topsoiled area (OSM and PSC, Glenharold, 6/10-11/82).

The amount of violations on which OSM failed to take enforcement action for observed violations is probably much greater than the above numbers indicate, because many violations observed by state inspectors accompanying OSM inspectors on joint inspections were not noted in OSM inspection reports, as discussed above. Violations observed by state inspectors during joint inspections which OSM failed to note included: failure to reestablish a berm around a topsoil stockpile after it was washed out in a storm two months earlier (DLQ, Rawhide, 9/14/82); failure to replace a straw bale dike filled with sediment (PSC, Glenharold, 6/10-11/82); scoria pushed on to undisturbed topsoil, failure to maintain a berm around a subsoil stockpile resulting in some loss of subsoil, and failure to maintain groundwater monitoring records at the mine site (PSC, South Beulah, 11/3-5/82); topsoil stockpiled in an unapproved location, blasting without proper warnings or signals, erosion on topsoiled areas over nine inches deep, and failure to post topsoil, perimeter, and buffer zone markers (DSL, Rosebud, 1/26/83).

In interviews, OSM inspectors stated that violations were not cited if they felt the threat of environmental damage was either minimal or would not occur outside the permit area. As one inspector explained, he would issue an NOV for a sediment pond that was filled with sediment or otherwise incapable of functioning improperly, "if other ponds are downstream to catch the runoff before it leaves the mine site."

In other cases, OSM did not cite violations if the states gave the operator a warning or requested the operator to abate. One OSM inspector acknowledged that inspectors for all three states gave warnings for many violations, rather than taking formal enforcement action, and indicated that he felt this was acceptable in many cases. For example, this inspector explained, "although inspectors in North Dakota may be a little lax on violations, they have a good working relationship with the operator" which enables them to get many problems abated through informal requests or warnings. This belief contrasts with the findings of this study that the warnings issued by states seldom result in prompt abatement of violations and do not deter the operator from committing additional violations.

Prompt Enforcement by States

Enforcement actions were not taken promptly in two of the three states under the oversight of the Casper field office. The Wyoming inspectors did issue NOVs at the mine site at the sample mines, but the North Dakota and Montana inspectors never did. Although OSM inspectors and administrators indicated in interviews that they were aware of this practice in Montana and North Dakota, the records indicated that the Casper office made no effort to enforce the formal OSM policy that stated inspectors take enforcement actions promptly upon observing violations.

OSM Enforcement Actions

The Casper office failed to issue any Ten-day Notices at the sample mines during 1982, although the states took no formal enforcement action for four violations documented in OSM inspection reports. In addition, the office failed to issue Ten-day Notices on the violations described in state reports despite the fact that the OSM staff knew that the violations existed and that the state had not taken any enforcement action. The Casper inspectors knew of these violations because they reviewed the state inspection reports and, unlike the Albuquerque inspectors, completed a form ("Summary of State and OSM Actions") for each mine describing the violations and enforcement actions taken based on the state reports. For example, an OSM inspector described 33 violations on the summary sheets for the Rosebud mine in Montana between January 1982 and May 1983. The State issued NOVs on only two violations of those described by the OSM inspector in the Summary form.*

In interviews, one official of the Casper office stated that the office did not adequately perform its enforcement responsibilities during most of 1982 -- because of problems in setting up the office after the OSM reorganization -- but had been much more diligent after November of 1982. The authors found that although the Casper field office did issue Ten-day Notices for some of the violations observed by OSM and state inspectors in 1983, no substantial action was taken to require the three states to consistently cite violations, and to stop substituting informal recommendations and warnings to operators.

The files indicate that Casper issued a total of only two Ten-day Notices during 1982 -- both as a result of citizens' complaints filed with OSM -- and issued only three Ten-day Notices between January and June 9, 1983. Of these three, one was issued on the basis of a violation described in a Wyoming state inspection report (82-1-2-2, issued 1/10/83); one was issued on the basis of correspondence between the Montana Department of State Lands and an operator indicating a violation existed (83-1-2-2, issued 3/25/83); and one was issued on the basis of a joint inspection during which a Wyoming inspector refused to issue an NOV for an observed violation (83-1-2-2, issued 6/9/83).

The states responded appropriately to two of the three Ten-day Notices issued in 1983 by issuing NOVs. However, the Wyoming Land Quality Division (LQD) refused to take enforcement action on Ten-day Notice 83-1-2-2 issued for blasting flyrock onto undisturbed topsoil. According to the OSM Inspection Supervisor, Gene Filer, "Nancy Freudenthal (Acting LQD Director) appealed to us that we had made a bad decision." She did not contest the fact that flyrock had been blasted onto reclaimed land but "didn't consider it a significant violation." OSM could not issue an NOV at this point, according to Filer, because the OSM inspector had not taken pictures of the violation to serve as evidence. OSM suggested that another joint inspection be conducted, during which it was found that the flyrock had been cleaned up and therefore, no further action was taken by either agency.

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*It should also be pointed out that the authors compared the Summary forms against the state inspection reports and found that some actions listed on the form were not violations while other violations were omitted.

Response to Citizen's Complaints

Two citizen's complaints for mines -- neither is in the sample -- were received by the Casper field office during 1982 and in both cases OSM promptly issued a Ten-day Notice to Montana and Wyoming. The state regulatory agencies conducted inspections but no violations were observed. The states sent the inspection reports to the citizens making the complaints. It appears that the Casper office handled the complaints properly and without delay.

Review of State Inspection Reports

Although the Casper office did review state inspection reports as soon as they were received, the states delayed sending copies of the inspection reports to OSM for several weeks after inspections were conducted during 1982. This made it impossible for OSM to follow up state reports in a timely manner. In the summer of 1983 the Casper field office requested that reports be sent within two weeks, and "the states are getting better about sending reports [promptly] because we're putting pressure on them," according to one Casper official.

As discussed above, many violations were documented in state inspection reports during 1982 for which OSM did not issue Ten-day Notices. According to OSM staff, no action was taken because there was no policy requiring them to do so until November 1982, when the Casper office initiated a practice of following up state inspection reports with telephone calls to the state offices, according to Gene Filer, Inspection Supervisor. According to Filer, if the state confirmed that a violation still existed and the state failed to issue an NOV immediately, then a Ten-day Notice was to be issued by the Casper office.

OSM files for the sample mines contained three memos indicating that the Casper office partially implemented this policy during the first five months in 1983 for some potential violations described in state inspection reports. In one case, for example, a Wyoming inspection report indicated that blasting had occurred without proper notice (LQD, Ash Creek, 11/5/82). OSM subsequently called and the state explained that because of the small size of the blast (less than 5 pounds equivalent of TNT) the regulations did not apply (OSM, Report of Telephone Conversation, 2/10/82). In the second case, three potential violations were noted in a Wyoming inspection report. No Ten-day Notices were issued, but OSM did conduct an inspection and found that all three had been abated or no longer existed (OSM, Report of Conversation, Big Horn Mine, 4/14/83).

In the third case, North Dakota's response to OSM indicated that a violation existed, yet no enforcement action was taken by either the state or OSM. In a report of the December 15, 1982 inspection, a state inspector noted that a large rill or "washout" existed along an access road. The report also noted that:

> This erosion has the potential to become a safety problem and accompanying mine personnel were instructed to repair the washout as required by Sec. 69-05.2-24-06 NDAC. (PSC, Center, 12/16/82.)

On January 27, 1983 an OSM inspector called North Dakota and despite confirmation that the violation still existed, no Ten-day Notice was issued. The OSM inspector merely noted that:

> The state Regulatory Authority is monitoring the problem which is to be corrected as soon as weather conditions permit. (OSM, Report of Telephone Conversation, 1/27/83.)

By March 3, 1983 the violation was still not abated, and a state inspector noted that:

> [T]he access road . . . was partially eroded away. This site has previously been staked as a warning to traffic but the stakes were not easily visible. [The operator] was advised that this is a hazardous situation and additional remedial measures were needed.

The authors reviewed the subsequent OSM and state inspection reports available -- through April 29, 1983 -- and found no mention of whether this hazardous violation was abated and that neither OSM nor North Dakota took enforcement action despite the fact that the violation caused environmental damage and presented a serious safety hazard.

SUMMARY

The Casper Office failed to carry out its regulatory responsibilities in 1982. It conducted only one-half of the minimum number of required inspections, and the inspection reports indicate that some of the inspections that were performed were of low quality. No enforcement action was taken on 80 percent of the violations observed by its inspectors and described in inspection reports.

Review of the 1983 records indicated that inspection frequency had improved greatly but the office was still not enforcing the law on violators. The office lacked an effective means of handling the failures of Montana, North Dakota, and Wyoming to enforce various parts of their state programs and, in contrast to Albuquerque, the Casper Office was apparently unaware of many of the states' practices.*

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*For example, the Casper office's oversight report to Congress makes no mention of Montana's policy that prohibits inspectors from issuing NOVs at the mine site. ("Annual Report, Montana Permanent Program," June 1983.)

Chart Showing a Comparison of the Performances of the Six States and OSM in 1982 for Complete Inspections, Citation of Violations, On-site Issuance of Violations, and Fines.

	NUMBER OF MINES IN SAMPLE	REQUIRED COMPLETE INSPECTIONS MADE	NUMBER OF VIOLATIONS OBSERVED	VIOLATIONS GIVEN NOVs & COs[1,2]	NOVs & COs ISSUED ON-SITE	AVERAGE FINAL FINE
COLORADO	18	61%	184	14%	36%	$ 670
MONTANA	5	155%	107	7%	0	1,011[3]
NEW MEXICO	5	90%	32	9%	0	319[3]
NO. DAKOTA	5	90%	96	2%	0	1,500[4]
UTAH	10	72%	126	34%	72%	544
WYOMING	10	105%	33	9%	100%	707[3]
OSM	53	56%	52	48%	0	1,691[3]

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[1] As the "Methods" section of the Appendix explains, each violation is counted, thus an NOV that includes three violations would be counted as three NOVs.

[2] Utah was the only state to issue Cessation Orders at the sample mines.

[3] The average fines for Montana, New Mexico, Wyoming, and OSM were calculated using NOVs and COs additional to those issued to the sample mines, as follows: Montana, all 9 NOVs issued in 1982; New Mexico, 15 NOVs issued in 1982; Wyoming, 46 NOVs issued between June 1981 and June 1983; OSM, 50 NOVs and COs issued between 1979 and 1981 in the western states.

[4] The North Dakota Public Service Commission issued one NOV in 1982, and no information could be obtained on NOVs and fines levied in previous years. A Judicial Complaint was filed on one of the two violations by the Department of Health which resulted in a $10,000 fine. That fine is not included in this calculation.

CONCLUSIONS AND RECOMMENDATIONS

This study set out to review the goals and the record of SMCRA in order to determine how effectively the states and OSM have used the inspection and enforcement system in the western states. We found that many environmental problems still exist and that the system designed to prevent these problems from occurring has yet to be seriously tried. The required inspections were not conducted, an many of those that were conducted were inadequate. Enforcement actions were rarely taken on violations, abatement was delayed, and penalties were waived or set too low to deter violations. (See Table on opposite page.)

The Act clearly mandates the states and OSM to take enforcement against violators, yet most of the western states have practiced a discretionary system, contrary to their own state laws and the Act. Under the oversight of OSM, all the states have allowed some operators to repeatedly ignore the law and others to create public safety hazards, pollute the water, and use the careless mining practices that cause long-term deterioration of the land and its resources.

Although a discretionary enforcement system might be preferable at some future time, it would be irresponsible to contemplate amending the Act to set up such a system now when a large number of mines have not achieved compliance and are still causing serious environmental problems in the coal fields across the country. The situation was best described by a Colorado operator:

> The law should be fairly and rigorously enforced with everyone. If it's not against some, such as Hawk's Nest, then we all get a bad name because people can . . . see the mess. If the law is not enforced now, what happens when these mines apply for release of their reclamation bond? [Will] the state agencies release them [from responsibility] even though they have not reclaimed and done things properly along the way? There will be a lot of pressure on the state agencies to approve release because they let these mines largely get by with it for all those years. It's too late to get tough at bond release. This means that the agencies are allowing some companies to trade future reclaimability for reduced operating costs now.

Under its oversight program, the Office of Surface Mining has long been aware of many of the problems identified in this study, but it has failed to exercise its responsibility to correct them.* All the states lobbied in the name of "states' rights" for the provisions of the Act allowing them to have a regulatory role and worked very hard to obtain approval for their program. Poor performance is not the privilege of states' rights, however, and fundamental and immediate changes must be made in order to implement the Act, prevent environmental problems, and achieve an effective and even-handed enforcement system. The changes necessary to achieve a sound program are described below.

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*Section 521 (b) of SMCRA requires OSM to conduct a hearing and make findings whenever it has information indicating that a state is failing to enforce any part of its programs effectively. If the state is found to be incapable or unwilling of enforcing its program, then OSM takes over enforcement of its program until the state is capable or willing. OSM has avoided making full use of this provision.

Training

1. OSM needs to sponsor a comprehensive training program for state inspectors and their supervisors in Colorado, Montana, New Mexico, and North Dakota on the conduct of inspections, report writing, collection and presentation of evidence, proper interpretation of the laws and regulations at the mine site, writing correct NOVs and COs, making proposed penalty assessments, investigative techniques, and dealing with conflict. As a whole, the performances of the Utah and Wyoming inspection staffs indicate that some skills need to be sharpened, such as making proposed penalty assessments for the Utah staff and proper interpretation of the laws and regulations at the mine site for the Wyoming staff. Review of the records and interviews indicate that the Casper staff members have had extensive training but do not use it consistently. They need to receive additional training in the comprehensive program described above, and OSM needs to bring its best inspectors and supervisors to Casper to conduct intensive field training for the staff. The staff of the Albuquerque office in general appears to have the necessary skills and expertise and to make use of them; however, more resources need to be devoted to sharpening the skills of those already qualified.

2. OSM must also sponsor a comprehensive training program for all state agency administrators and Board or Commission members on the requirements and goals of the laws and regulations, conduct of hearings and conferences, proper preparation of written decisions, enforcement and penalty tools, and dealing with conflict.

Inspections and Enforcement Actions

1. OSM should launch an immediate investigation to identify those mines that state reports show as having committed or delayed abatement of numerous or serious violations.

2. OSM must immediately begin conducting frequent inspections of these mines -- at least twice monthly -- to assure that proper mining practices are used, that long-standing conditions are corrected, and that effective enforcement actions are taken immediately on violations. This study has identified some obvious mines to be included in the frequent inspection program; among them are the Allen, Eagle, Hawk's Nest, and Maxwell mines in Colorado; the Divide, P.M., and Rosebud mines in Montana; the San Juan and York mines in New Mexico; the Center, Glenharold, Indianhead, and South Beulah mines in North Dakota; and the Factory Butte and Price River mines in Utah.

3. OSM should assume the Colorado, Montana, New Mexico, and North Dakota inspection and enforcement programs until such time states show that they have implemented the changes described here and are capable and willing to carry out their programs.

4. OSM and the state agencies in Colorado, Montana, New Mexico, and North Dakota need to immediately issue policy statements to all members of the inspection staff confirming that inspectors are authorized and expected to issue enforcement actions at the mine site except when necessary to conduct additional research or await the results of sample analyses. These policy statements need to contain thorough instructions on what constitutes a violation and the procedures for modifying NOVs and COs, as well as require that evidence be collected for every violation observed.

5. OSM should issue a policy statement confirming that its inspectors are responsible for the immediate issuance of Ten-day Notices and NOVs. It needs to state that, after a state agency has refused to take the appropriate enforcement action, Field Office staffs are not to delay issuance of the Notices and NOVs while attempts are made to persuade state agencies to issue NOVs.

6. OSM must immediately rescind the present requirement for OSM inspectors to make a second inspection before an NOV can be issued, once a state has not taken the appropriate enforcement action on a violation that is the subject of a Ten-day Notice. This change should apply only to those circumstances in which the Ten-day Notice was based on a previous OSM inspection and not to those based on citizen complaints and state inspection reports.

7. OSM should change its method of counting oversight inspections from permit number to mine sites.

Penalties

1. The states should make wider use of the many penalty tools available to deter violators and achieve compliance with the law. These tools include determination of patterns of violation and issuance of show cause orders and the bringing of charges against any individuals and corporate officers responsible for violations, failures, or refusals to comply with enforcement orders.

2. The states must assess fines at a much higher level in order to deter violations. Fines should reflect the economic gain to the operator from committing the violation and include an additional penalty for each day the violation continued.

3. Both the states and OSM should make far greater and more imaginative use of remedial measures in order to prevent the practices causing many of the violations. For example, the company officers and employees of a chronic violator could be required to satisfactorily complete a training course on the requirements of the law and the proper techniques for achieving compliance.

4. OSM should assume the penalty portion of the Utah and Wyoming programs until the states show that they have implemented the penalty, personnel, and training changes described here and are capable and willing to carry out fair and effective penalty programs.

Personnel

1. All six state agencies need to review their job descriptions for inspectors, supervisors, and administrators to ensure that they describe their actual duties and that these employees are expected to take enforcement actions, levy fines, and assess penalties.*

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*In interviews, inspectors for several states said they seldom took enforcement actions because they were not hired to be "mine cops." They viewed the performance of enforcement duties as a hindrance to their careers or were unable to deal with the operators' reactions when they issued NOVs or COs. It's of interest that they all were required to split their time between inspection and mine plan review duties. Transfers to other positions need to be arranged for those employees who find such duties distasteful or are incapable of performing them in a satisfactory way.

2. Every agency needs to obtain additional staff in order to carry out an effective inspection and enforcement program. It was not the purpose of this study to determine if existing budgets were allocated properly or if additional funds were necessary; however, through interviews and review of the records, we found that, at a minimum, the following additional staff are needed: Colorado, two inspectors, a trained assessment officer, and an investigator; Montana, an attorney experienced in mining law enforcement, permitting, and penalties; New Mexico, a trained assessment officer, and an investigator; North Dakota, an attorney experienced in mining law enforcement, permitting, and penalties; Utah, a trained assessment officer, an investigator, and an attorney experienced in mining law enforcement, permitting, and penalties; Wyoming, two inspectors, and an attorney experienced in mining law enforcement, permitting, and penalties; OSM Albuquerque, two inspectors, an oversight program analyst, and an attorney experienced in mining law enforcement, permitting, and penalties; OSM Casper, an attorney experienced in mining law enforcement, permitting, and penalties, at least one inspector, and an oversight program analyst.

Reports and Records

1. Inspection report forms need revision to include a checklist of all items to be reviewed for compliance at the mine site and a narrative describing site conditions, the areas and the activities actually reviewed at the mine site, the inspector's observations, the status of the operator's compliance with enforcement actions, existing problems and their resolution, and the evidence collected and the analyses and measurements made by the inspector.

2. All agencies should improve record keeping and documentation of activities and decisions. The authors identified the following problems: Colorado, the records contain inadequate documentation of the rationale for final penalty assessments and termination and vacation of NOVs; Montana, no rationales for final penalty assessments were available; New Mexico, inspection and enforcement records and related correspondence were poorly organized; some could not be found if indeed they exist; North Dakota, some records were poorly organized; Utah, some records were poorly organized. Documentation of the rationales for final penalty assessments and Board actions was poor; Wyoming, no documentation of the rationale for final penalty assessments was available. Most other records appeared to be well organized and complete; OSM Albuquerque, some inspection reports and complete mine plans were not available and no complete set of policy directives was available; OSM Casper, some complete mine plans were not available and no complete set of policy directives was available.

In sum, the changes outlined here represent a major overhaul of the present practices, and, as such will not come easily or automatically. OSM and the state agencies require a great deal of support to make them, particularly from the Governors who, as the chief administrative officers and highest elected officials of the states, have the ultimate responsibility for the performance of the state agencies. One of the most striking results from this study is the absence of citizens -- every state agency and OSM remarked on their few contacts with the citizens whose efforts passed the Act. None of the agencies has an active public participation program. Some consider good citizens to be those who don't ask tough questions, file complaints, or actively exercise their rights. Nevertheless, citizens do have the right and the duty to see that their Act and state laws are carried out.

APPENDIX

METHODS

Sources of Information

As primary sources of information, the authors relied on the inspection reports and enforcement documents of the federal and state agencies. The authors reviewed records and conducted interviews at state agency headquarters in Colorado, New Mexico, Utah, and Wyoming and at the Office of Surface Mining (OSM) field offices in Albuquerque, New Mexico, and Casper, Wyoming. Records for Montana and North Dakota were also reviewed in Casper and supplemented by data obtained from the state agency. Written correspondence and telephone interviews were conducted with officials from all six states and both OSM field offices in order to obtain additional information and to clarify points.

The documents reviewed included: about 1,200 inspection reports; the NOVs and COs issued by State agencies and OSM's Ten-day Notices; the assessment "worksheets" used by inspectors to calculate proposed fines; assessment conference reports and written memoranda regarding the final penalties levied; written correspondence and records of verbal communications between OSM and State agencies; OSM policy memoranda; correspondence with mine operators; the federal and state laws and regulations; and miscellaneous records.

Personal and telephone interviews were conducted with a minimum of four inspectors and administrators from each state and federal office except Colorado in order to assemble as complete a perspective of each program as possible. The topics included "official" policies and philosophies of top administrators as well as the "on-the-ground" practices of inspectors. All quoted statements from inspectors regarding professional opinions on agency activities are not attributed in order to protect their identities.

Agency personnel in the Montana, New Mexico, North Dakota, Utah and Wyoming agencies, as well as the OSM personnel in the field and Washington offices, were extremely cooperative in granting interviews and making information available. They suggested topics for the study and many gave off-duty time to give additional information and discuss the issues raised by the study. The authors accompanied a Utah inspector on his inspections and visited a number of mines in Colorado, Montana, Utah and Wyoming during the study. Previous visits had been made to mines in New Mexico and North Dakota. All the operators were very cooperative in allowing access to the mines and discussing their experiences.

Administrators of the Colorado Mined Land Reclamation Division granted interviews but ordered three Division inspectors to cancel the personal interviews they had scheduled with the authors during the week of August 29, 1983. When the authors asked for a reconsideration of the order, David Getches, Director of the Division of Natural Resources, wrote the authors, saying only a one hour interview would be permitted with all staff members present. The authors declined to use such a procedure that would not allow follow-up questions, free expression of the inspectors views, and differed from the open interviews conducted with the staffs of the other five state agencies.

Sample Mines

Inspection and enforcement records for approximately one-quarter to one-third of the mines in each of the six states were reviewed for this study. These mines, listed at the beginning of each state chapter, comprise "the sample mines." Almost all the mines reviewed in this report were also included in Public Land Institute's 1980 report on the implementation of the Surface Mining Control and Reclamation Act (SMCRA) in the western states, "Stripping the Law on Coal." Unlike the previous study, this study has included the Montana program. The mines for each state were chosen because they offered a broad cross section of coal operations, both in that state and the western region. Mines were selected to represent large, small, and inactive operations; federal, state, and private lands; different coal basins; underground, strip mining, and a combination of coal removal techniques.

Period of Review

The primary period used in this study is the calendar year 1982. The choice of this period offers two advantages. It often takes several months before agencies can complete their records on inspection and enforcement activities, particularly if there are appeals and hearings. Also, by January 1, 1982 all the states had at least eleven months of experience with their program, and any start-up difficulties should have been solved. In interviews, several state program administrators questioned whether it were fair to assume that a year provided sufficient time to fully implement their programs. We believe so. Before OSM approved a state program, the state was required to demonstrate that it had sufficient budget and personnel "to implement, administer and enforce the provisions of the program . . . ." (30 CFR 732.15(d).) In addition, the authors selectively reviewed inspection and enforcement records from 1979 through mid 1983 to obtain background information and to follow up on policies and problems identified from the 1982 records and interviews with agency officials. For example, when review of 1982 inspection and enforcement files identified problems with specific mining operations or practices of the regulating agencies, a concerted effort was made to determine whether these had been corrected in the first half of 1983.

Criteria for Evaluation and Analysis

Inspection and enforcement records for each of the sample mines were screened for a variety of items that indicate the effectiveness of the agencies' performances. These items are listed below:

1. The frequency of complete and partial inspections.

2. The completeness of inspections. Among the factors considered were: the areas of the mine physically inspected; the regulations for which compliance was specifically checked; the collection of evidence and checks made to confirm compliance, such as photographs; water and soil samples; and slope and vegetation measurements; and the extent to which inspectors followed-up problems or violations noted in previous inspection reports.

3. Documentation of inspections. In-depth, prompt inspection reports are required by SMCRA for a number of administrative reasons, as well as to ensure that the public is able to become informed of mine conditions, compliance with regulations, and the adequacy of inspections.

4. Violations observed by inspectors. The authors identified violations as those situations described in inspection reports that are prohibited by the State law and regulations. If an inspection report was unclear as to whether an actual violation had occurred, the authors did not count the situation as a violation. For example, many reports noted cases in which culverts, ditches, sediment ponds, and other environmental control structures were "in need of maintenance" or "needed cleaning." These were not counted as violations unless the report also indicated that the structures could not function properly due to lack of maintenance. Similarly, erosion was not counted as a violation unless an inspection report indicated it was "excessive," "major," or exceeded 9 inches in depth or width on areas that had been reclaimed or the topsoil had been replaced.

5. Enforcement actions taken on observed violations. Those NOVs and COs containing multiple violations were counted as separate actions for this report. For example, if an NOV listed four violations, the NOV was counted as four NOVs.

6. On-site issuance of NOVs and COs by inspectors. This was analyzed for two reasons. The federal Act intended the inspectors to issue violations before leaving the mine site whenever possible so abatement could begin immediately and the environmental damage or the potential for damage could be minimized. In some cases, inspectors may need to wait for analyses to be performed or conduct further investigations before issuing an NOV or CO. However, if long delays occur before many are issued, it often indicates that the inspectors do not, in practice, have the authority or the proper training to issue. In some cases, the agency may bow to pressure from some operators and adopt policies and procedures to avoid taking formal enforcement actions.

7. Substitution of warnings for enforcement actions on violations.

8. Compliance with specific regulations by operators. Patterns of related or serious violations occurring at individual mines are noted wherever possible in order to identify "problem mines."

9. Environmental impacts or potential impacts of violations.

10. Abatement of violations using formal enforcement actions and warnings.

11. Penalties levied for violations. Because of the highly subjective nature of "the degree of seriousness" of each violation, little analysis was done to determine if individual fines were justified by the "seriousness" of each violation. Instead, average penalties per violation were generally compared with the average fine levied by OSM for 50 NOVs issued from 1979 to 1981 in the western states. It should be pointed out that these 50 NOVs were not selected by the authors to be representative but were all those for which records could be found in the OSM Field Office.

12. Reductions during the penalty assessment process. Reductions for "good faith" were analyzed, whenever possible, to determine if the operator's performance warranted a reduction. Also, the amount of reductions during the assessment process was calculated, where records were available, to determine whether "good faith" reductions were routinely made or were reserved for cases when operators took "extraordinary" abatement measures, as required by SMCRA.

Citations

This study uses a standard citation procedures except for references to inspection reports. These are noted by the date of the inspection in this manner: 5/18/82. When confusion could exist as to which mine is being discussed or which agency performed the inspection, the agency acronym precedes the mine name.

GLOSSARY OF TERMS AND ACRONYMS

Abate - To correct or repair the cause of a violation.

CO - Cessation Order, the type of enforcement action that must be issued in three situations: when a condition or practice presents imminent danger to the health and safety of the public; when a condition or practice causes or has the potential to cause significant imminent environmental harm; and when an operator has failed to abate an NOV within the time limit. As the name implies, a CO shuts down that part of the mining activity where the situation occurred. A CO automatically earns a $750 per day penalty.

DEQ - The Wyoming Department of Environmental Quality.

DOGM - The Utah Division of Oil, Gas and Mining.

DSL - The Montana Department of State Lands.

Enforcement Action - Term used to describe an NOV or CO issued to an operator for a violation. By law, operators must comply with an enforcement action.

Issue a Citation - Write an NOV or CO.

LQD - The Wyoming Land Quality Division within the Department of Environmental Quality.

MLRD - The Colorado Mined Land Reclamation Division.

MMD - The New Mexico Mining and Minerals Division.

NOV - Notice of Violation, the type of enforcement action required for ordinary violations.

PSC - The North Dakota Public Service Commission.

OSM - The U.S. Office of Surface Mining.

SMCRA - The Surface Mining Control and Reclamation Act of 1977.

Termination - Occurs when an inspector confirms that a violation has been corrected as ordered in an NOV or CO and makes a written report to that effect.

Vacate - To cancel an NOV or CO.

Warning - An informal alert to operators to correct a violation. Warnings carry no legal obligation for the operator to comply.